

DEMOCRACY

IN

AMERICA.

"The very Deity itself, both keepeth and requireth for ever this to be kept as a law, that wheresoever there is a coagmentation of many, the lowest be knit unto the highest by that which, being interjacent, may cause each to cleave to the other, and so all to continue one. This order of things in public societies is the work of policy, and the proper instrument thereof in every degree is Power: Power being that ability which we have of ourselves, or receive from others for performance of any action."—Hobbes.

DEMOCRACY IN AMERICA.

BY

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AVOCAT À LA COUR ROYALE DE PARIS,
ETC., ETC.

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TRANSLATOR'S PREFACE.

IN presenting the translation of this work to the public, preceded by an Introduction in which the author calls the attention of the reader to the present social state of France, I may perhaps be allowed to say a few words on the inferences which are to be drawn from the democratic institutions of America relative to our own political condition. We live at a time when so many of the maxims of government are worn out, that in casting our eyes upon the aphorisms of the great statesmen of Europe, we are astonished to find that the authority they attempted to defend is vanished, and the principles by which they defended it are no more. The book of 'The

Prince' is closed for ever as a State manual ; and the book of 'The People'—a book of perhaps darker sophistries and more pressing tyranny—is as yet unwritten. Nevertheless, the events of every day ought to impress upon our minds the necessity of studying that element which threatens us ; and for a generation which is manifestly called upon to witness the solemn and terrible changes of the constitution of the empires of the earth, the deadliest sin is thoughtlessness, the most noxious food is prejudice, and the most fatal disease is party-spirit. The relations between men and power have been so indifferently understood ever since the beginning of the world, that we have found out no remedy for evil but evil, no safety from injury but injury, no protection from attack but attack ; and in all the wild experiments which a relaxed social condition has undergone, we have only had fresh confirmation of a truth enounced by Lord Bacon, namely, that the logical part of men's minds is often good, but the mathe-

matical is nothing worth; that is, they can judge well of the attaining any end, but cannot judge of the value of the end itself. If England has hitherto maintained a sober and becoming position in the midst of greater revolutions than the world has witnessed since the Christian æra, not the less does it behove her to meditate upon the lessons of her allies and her descendants. What her increasing intelligence might suggest, her increasing evils, her increasing population, her burdens, her crime, and her perils enforce: the democratic element must be met, and to be met it must be known, before the unhallowed rites of destruction have begun; before recourse has been had to the probabilities of chance, in ignorance of the probabilities of cause; before the vertigo of conquest has seized the lower orders, or the palsy of dejection fallen upon the aristocracy. It is presumed that the lesson will not be the less worthy of our attention because it is given us by a writer whose national experience and whose stand-

ard of comparison is more democratic than anything which we are acquainted with in England. Although the reasonableness of democracy is shown by the American States, where the activity of a trading population is dignified by the exercise of many civic virtues, and where the task of the legislator was not to change or to repair, but to organize and create, the perilous erection of a central power, such as now obtains in France, may check the confidence with which the hand of the many is raised against the errors of the few, and we may hesitate before we displace the time-honoured dispensers of social benefits, to make way for the more compact and less flexible novelties of the time. Those thinkers who are wont in politics to substitute principles of general utility for those of local interests, are like builders who should in all cases rely on the principle of gravity, to the exclusion of the law of cohesion. The gift of self-respect, which is the parent of the inward dignity of the citizen, is not derived from the

debasing and democratic turbulence of party-spirit, affecting to compass the ends of the State to which he belongs, but from the quiet exercise of functions nearer home.

The English reader will probably be struck with the revival in the United States of the more ancient parts of our Constitution, whilst the Feudal or Norman element is totally excluded, except in a few cases which may be quoted as anomalies. Blackstone affirms (and the great authority of Selden corroborates the fact,) that the partible quality of lands by the custom of gavelkind is undoubtedly of British origin, and obtained universally before the æra of the Norman Conquest. The constitution of general public assemblies; the election of their magistrates by the people, their sheriffs, their coroners, their portreeves, and even their tithing-men; the dispensation of justice in the county courts principally, except in cases in which the supreme authority of the Crown was called upon to interfere, are laws of Saxon parent-

age. These principles are the very basis of the American Constitution; and if the settlers of New England discarded the feudal rights, the royal justiciars, and the claims of primogeniture, when they relinquished the feelings, the traditions, and the character of English subjects, it is not without pride, mingled with admiration, that a Briton points to the common source of our liberties, and to that Saxon foundation of our national existence which we couple with the name of Alfred, and from which many of the institutions of the American States derive their being.

I cannot conclude without expressing a hope that this translation may tend to spread in England some of those sound and comprehensive views of the nature and tendency of the democratic element which its author has put forth in France; nor without expressing my very warm thanks to M. de Tocqueville for the kindness with which he has assisted me in the difficulties which presented them-

selves in preparing this book for the public eye. Whatever may be the success of the following pages, I shall always remember with pleasure that I was encouraged in my task by the high esteem and sincere regard which I entertain for the author.

Circumstances have rendered the separate publication of the first volume advisable, and this course was the more readily adopted as the first volume may be said to contain the whole of the analytical part of the work; and the second (which will follow in the course of a few weeks,) offers more general considerations upon the character, the vices, the motives; and the future destiny of the democratic people, the retiring Indians, and the wretched slaves of the United States of America.

H. R.

Hampstead, 9th June, 1835.

INTRODUCTION.

AMONGST the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of conditions. I readily discovered the prodigious influence which this primary fact exercises on the whole course of society, by giving a certain direction to public opinion, and a certain tenour to the laws; by imparting new maxims to the governing powers, and peculiar habits to the governed.

I speedily perceived that the influence of this fact extends far beyond the political character and the laws of the country, and that it has no less empire over civil society than over the Government; it creates opinions, engenders sentiments, suggests the ordinary practices of life, and modifies whatever it does not produce.

The more I advanced in the study of American

society, the more I perceived that the equality of conditions is the fundamental fact from which all others seem to be derived, and the central point at which all my observations constantly terminated.

I then turned my thoughts to our own hemisphere, where I imagined that I discerned something analogous to the spectacle which the New World presented to me. I observed that the equality of conditions is daily progressing towards those extreme limits which it seems to have reached in the United States; and that the democracy which governs the American communities appears to be rapidly rising into power in Europe.

I hence conceived the idea of the book which is now before the reader.

It is evident to all alike that a great democratic revolution is going on amongst us; but there are two opinions as to its nature and consequences. To some it appears to be a novel accident, which as such may still be checked; to others it seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency which is to be found in history.

Let us recollect the situation of France seven hundred years ago, when the territory was divided amongst a small number of families, who were the

owners of the soil and the rulers of the inhabitants; the right of governing descended with the family inheritance from generation to generation; force was the only means by which man could act on man; and landed property was the sole source of power.

Soon, however, the political power of the clergy was founded, and began to exert itself: the clergy opened its ranks to all classes, to the poor and the rich, the villain and the lord; equality penetrated into the Government through the Church, and the being who as a serf must have vegetated in perpetual bondage, took his place as a priest in the midst of nobles, and not unfrequently above the heads of kings.

The different relations of men became more complicated and more numerous as society gradually became more stable and more civilized. Thence the want of civil laws was felt; and the order of legal functionaries soon rose from the obscurity of the tribunals and their dusty chambers, to appear at the court of the monarch, by the side of the feudal barons in their ermine and their mail.

Whilst the kings were ruining themselves by their great enterprises, and the nobles exhausting their resources by private wars, the lower orders

were enriching themselves by commerce. The influence of money began to be perceptible in State affairs. The transactions of business opened a new road to power, and the financier rose to a station of political influence in which he was at once flattered and despised.

Gradually the spread of mental acquirements, and the increasing taste for literature and art, opened chances of success to talent; science became a means of government, intelligence led to social power, and the man of letters took a part in the affairs of the State.

The value attached to the privileges of birth decreased in the exact proportion in which new paths were struck out to advancement. In the eleventh century nobility was beyond all price; in the thirteenth it might be purchased; it was conferred for the first time in 1270; and equality was thus introduced into the Government by the aristocracy itself.

In the course of these seven hundred years, it sometimes happened that in order to resist the authority of the Crown, or to diminish the power of their rivals, the nobles granted a certain share of political rights to the people. Or, more frequently, the king permitted the lower orders to enjoy a de-

gree of power, with the intention of repressing the aristocracy.

In France the kings have always been the most active and the most constant of levellers. When they were strong and ambitious, they spared no pains to raise the people to the level of the nobles; when they were temperate or weak, they allowed the people to rise above themselves. Some assisted the democracy by their talents, others by their vices. Louis XI. and Louis XIV. reduced every rank beneath the throne to the same subjection; Louis XV. descended, himself and all his Court, into the dust.

As soon as land was held on any other than a feudal tenure, and personal property began in its turn to confer influence and power, every improvement which was introduced in commerce or manufacture was a fresh element of the equality of conditions. Henceforward every new discovery, every new want which it engendered, and every new desire which craved satisfaction, was a step towards the universal level. The taste for luxury, the love of war, the sway of fashion, and the most superficial as well as the deepest passions of the human heart, cooperated to enrich the poor and to impoverish the rich.

From the time when the exercise of the intellect became the source of strength and of wealth, it is impossible not to consider every addition to science, every fresh truth, and every new idea as a germ of power placed within the reach of the people. Poetry, eloquence, and memory, the grace of wit, the glow of imagination, the depth of thought, and all the gifts which are bestowed by Providence with an equal hand, turned to the advantage of the democracy; and even when they were in the possession of its adversaries, they still served its cause by throwing into relief the natural greatness of man; its conquests spread, therefore, with those of civilization and knowledge; and literature became an arsenal, where the poorest and the weakest could always find weapons to their hand.

In perusing the pages of our history, we shall scarcely meet with a single great event, in the lapse of seven hundred years, which has not turned to the advantage of equality.

The Crusades and the wars of the English decimated the nobles and divided their possessions; the erection of communes introduced an element of democratic liberty into the bosom of feudal monarchy; the invention of fire-arms equalized the villain and the noble on the field of battle;

printing opened the same resources to the minds of all classes; the post was organized so as to bring the same information to the door of the poor man's cottage, and to the gate of the palace; and Protestantism proclaimed that all men are alike able to find the road to heaven. The discovery of America offered a thousand new paths to fortune, and placed riches and power within the reach of the adventurous and the obscure.

If we examine what has happened in France at intervals of fifty years, beginning with the eleventh century, we shall invariably perceive that a twofold revolution has taken place in the state of society. The noble has gone down on the social ladder, and the *roturier* has gone up; the one descends as the other rises. Every half-century brings them nearer to each other, and they will very shortly meet.

Nor is this phenomenon at all peculiar to France. Whithersoever we turn our eyes we shall witness the same continual revolution throughout the whole of Christendom.

The various occurrences of national existence have everywhere turned to the advantage of democracy; all men have aided it by their exertions: those who have intentionally laboured in its cause,

and those who have served it unwittingly ; those who have fought for it, and those who have declared themselves its opponents,—have all been driven along in the same track, have all laboured to one end, some ignorantly and some unwillingly ; all have been blind instruments in the hands of God.

The gradual development of the equality of conditions is therefore a providential fact, and it possesses all the characteristics of a Divine decree : it is universal, it is durable, it constantly eludes all human interference, and all events as well as all men contribute to its progress.

Would it, then, be wise to imagine that a social impulse which dates from so far back, can be checked by the efforts of a generation ? Is it credible that the democracy which has annihilated the feudal system and vanquished kings, will respect the citizen and the capitalist ? Will it stop now that it is grown so strong, and its adversaries so weak ?

None can say which way we are going, for all terms of comparison are wanting : the equality of conditions is more complete in the Christian countries of the present day, than it has been at any time, or in any part of the world ; so that the

extent of what already exists prevents us from foreseeing what may be yet to come.

The whole book which is here offered to the public has been written under the impression of a kind of religious dread produced in the author's mind by the contemplation of so irresistible a revolution, which has advanced for centuries in spite of such amazing obstacles, and which is still proceeding in the midst of the ruins it has made.

It is not necessary that God himself should speak in order to disclose to us the unquestionable signs of his will; we can discern them in the habitual course of nature, and in the invariable tendency of events: I know, without a special revelation, that the planets move in the orbits traced by the Creator's finger.

If the men of our time were led by attentive observation and by sincere reflection, to acknowledge that the gradual and progressive development of social equality is at once the past and future of their history, this solitary truth would confer the sacred character of a divine decree upon the change. To attempt to check democracy would be in that case to resist the will of God; and the nations would then be constrained to make the best of the social lot awarded to them by Providence.

The Christian nations of our age seem to me to present a most alarming spectacle; the impulse which is bearing them along is so strong that it cannot be stopped, but it is not yet so rapid that it cannot be guided: their fate is in their hands; yet a little while and it may be so no longer.

The first duty which is at this time imposed upon those who direct our affairs is to educate the democracy; to warm its faith, if that be possible; to purify its morals; to direct its energies; to substitute a knowledge of business for its inexperience, and an acquaintance with its true interests for its blind propensities; to adapt its government to time and place, and to modify it in compliance with the occurrences and the actors of the age.

A new science of politics is indispensable to a new world.

This, however, is what we think of least; launched in the middle of a rapid stream, we obstinately fix our eyes on the ruins which may still be descried upon the shore we have left, whilst the current sweeps us along, and drives us backwards toward the gulf.

In no country in Europe has the great social revolution which I have been describing made such ra-

'pid progress as in France; but it has always been borne on by chance. The heads of the State have never had any forethought for its exigencies, and its victories have been obtained without their consent or without their knowledge. The most powerful, the most intelligent, and the most moral classes of the nation have never attempted to connect themselves with it in order to guide it. The people has consequently been abandoned to its wild propensities, and it has grown up like those outcasts who receive their education in the public streets, and who are unacquainted with aught but the vices and wretchedness of society. The existence of a democracy was seemingly unknown, when on a sudden it took possession of the supreme power. Everything was then submitted to its caprices; it was worshiped as the idol of strength; until, when it was enfeebled by its own excesses, the legislator conceived the rash project of annihilating its power, instead of instructing it and correcting its vices; no attempt was made to fit it to govern, but all were bent on excluding it from the Government.

The consequence of this has been that the democratic revolution has been effected only in the material parts of society, without that concomitant change in laws, ideas, customs and manners which

was necessary to render such a revolution beneficial. We have gotten a democracy, but without the conditions which lessen its vices and render its natural advantages more prominent; and although we already perceive the evils it brings, we are ignorant of the benefits it may confer.

While the power of the Crown, supported by the aristocracy, peaceably governed the nations of Europe, society possessed, in the midst of its wretchedness, several different advantages which can now scarcely be appreciated or conceived.

The power of a part of his subjects was an insurmountable barrier to the tyranny of the prince; and the monarch, who felt the almost divine character which he enjoyed in the eyes of the multitude, derived a motive for the just use of his power from the respect which he inspired.

High as they were placed above the people, the nobles could not but take that calm and benevolent interest in its fate which the shepherd feels towards his flock; and without acknowledging the poor as their equals, they watched over the destiny of those whose welfare Providence had entrusted to their care.

The people, never having conceived the idea of a social condition different from its own, and en-

tertaining no expectation of ever ranking with its chiefs, received benefits from them without discussing their rights. It grew attached to them when they were clement and just, and it submitted without resistance or servility to their exactions, as to the inevitable visitations of the arm of God. Custom, and the manners of the time, had moreover created a species of law in the midst of violence, and established certain limits to oppression.

As the noble never suspected that any one would attempt to deprive him of the privileges which he believed to be legitimate, and as the serf looked upon his own inferiority as a consequence of the immutable order of nature, it is easy to imagine that a mutual exchange of good-will took place between two classes so differently gifted by fate. Inequality and wretchedness were then to be found in society; but the souls of neither rank of men were degraded.

Men are not corrupted by the exercise of power or debased by the habit of obedience; but by the exercise of a power which they believe to be illegal and by obedience to a rule which they consider to be usurped and oppressive.

On one side was wealth, strength, and leisure, accompanied by the refinements of luxury, the ele-

gance of taste, the pleasures of wit, and the religion of art. On the other was labour, and a rude ignorance; but in the midst of this coarse and ignorant multitude, it was not uncommon to meet with energetic passions, generous sentiments, profound religious convictions, and independent virtues.

The body of a State thus organized might boast of its stability, its power, and, above all, of its glory.

But the scene is now changed, and gradually the two ranks mingle; the divisions which once severed mankind are lowered; property is divided, power is held in common, the light of intelligence spreads, and the capacities of all classes are equally cultivated; the State becomes democratic, and the empire of democracy is slowly and peaceably introduced into the institutions and the manners of the nation.

I can conceive a society in which all men would profess an equal attachment and respect for the laws of which they are the common authors; in which the authority of the State would be respected as necessary, though not as divine; and the loyalty of the subject to the chief magistrate would not be a passion, but a quiet and rational persuasion. Every individual being in the possession of rights

which he is sure to retain, a kind of manly reliance and reciprocal courtesy would arise between all classes, alike removed from pride and meanness.

The people, well acquainted with its true interests, would allow, that in order to profit by the advantages of society, it is necessary to satisfy its demands. In this state of things, the voluntary association of the citizens might supply the individual exertions of the nobles, and the community would be alike protected from anarchy and from oppression.

I admit that in a democratic State thus constituted society will not be stationary; but the impulses of the social body may be regulated and directed forwards; if there be less splendour than in the halls of an aristocracy, the contrast of misery will be less frequent also; the pleasures of enjoyment may be less excessive, but those of comfort will be more general; the sciences may be less perfectly cultivated, but ignorance will be less common; the impetuosity of the feelings will be repressed, and the habits of the nation softened; there will be more vices and fewer crimes.

In the absence of enthusiasm and of an ardent faith, great sacrifices may be obtained from the members of a commonwealth by an appeal to their

understandings and their experience: each individual will feel the same necessity for uniting with his fellow-citizens to protect his own weakness; and as he knows that if they are to assist he must co-operate, he will readily perceive that his personal interest is identified with the interest of the community.

The nation, taken as a whole, will be less brilliant, less glorious, and perhaps less strong; but the majority of the citizens will enjoy a greater degree of prosperity, and the people will remain quiet, not because it despairs of amelioration, but because it is conscious of the advantages of its condition.

If all the consequences of this state of things were not good or useful, society would at least have appropriated all such as were useful and good; and having once and for ever renounced the social advantages of aristocracy, mankind would enter into possession of all the benefits which democracy can afford.

But here it may be asked what we have adopted in the place of those institutions, those ideas, and those customs of our forefathers which we have abandoned.

The spell of royalty is broken, but it has not been succeeded by the majesty of the laws; the

people has learned to despise all authority, but fear now extorts a larger tribute of obedience than that which was formerly paid by reverence and by love.

I perceive that we have destroyed those independent beings which were able to cope with tyranny single-handed ; but it is the Government that has inherited the privileges of which families, corporations, and individuals have been deprived ; the weakness of the whole community has therefore succeeded to that influence of a small body of citizens, which, if it was sometimes oppressive, was often conservative.

The division of property has lessened the distance which separated the rich from the poor ; but it would seem that the nearer they draw to each other, the greater is their mutual hatred, and the more vehement the envy and the dread with which they resist each other's claims to power ; the notion of Right is alike insensible to both classes, and Force affords to both the only argument for the present, and the only guarantee for the future.

The poor man retains the prejudices of his forefathers without their faith, and their ignorance without their virtues ; he has adopted the doctrine of self-interest as the rule of his actions, without understanding the science which controls it, and

his egotism is no less blind than his devotedness was formerly.

If society is tranquil, it is not because it relies upon its strength and its well-being, but because it knows its weakness and its infirmities; a single effort may cost it its life; everybody feels the evil, but no one has courage or energy enough to seek the cure; the desires, the regret, the sorrows, and the joys of the time produce nothing that is visible or permanent, like the passions of old men which terminate in impotence.

We have, then, abandoned whatever advantages the old state of things afforded, without receiving any compensation from our present condition; having destroyed an aristocracy, we seem inclined to survey its ruins with complacency, and to fix our abode in the midst of them.

The phænomena which the intellectual world presents are not less deplorable. The democracy of France, checked in its course or abandoned to its lawless passions, has overthrown whatever crossed its path, and has shaken all that it has not destroyed. Its empire on society has not been gradually introduced, or peaceably established, but it has constantly advanced in the midst of disorder and the agitation of a conflict. In the heat of the struggle

each partisan is hurried beyond the limits of his opinions by the opinions and the excesses of his opponents, until he loses sight of the end of his exertions, and holds a language which disguises his real sentiments or secret instincts. Hence arises the strange confusion which we are witnessing.

I cannot recall to my mind a passage in history more worthy of sorrow and of pity than the scenes which are happening under our eyes; it is as if the natural bond which unites the opinions of man to his tastes, and his actions to his principles, was now broken; the sympathy which has always been acknowledged between the feelings and the ideas of mankind appears to be dissolved, and all the laws of moral analogy to be abolished.

Zealous Christians may be found amongst us; whose minds are nurtured in the love and knowledge of a future life, and who readily espouse the cause of human liberty, as the source of all moral greatness. Christianity, which has declared that all men are equal in the sight of God, will not refuse to acknowledge that all citizens are equal in the eye of the law. But, by a singular concurrence of events, religion is entangled in those institutions which democracy assails, and it is not unfrequently brought to reject the equality it loves, and to curse

that cause of liberty as a foe, which it might hallow by its alliance.

By the side of these religious men I discern others whose looks are turned to the earth more than to Heaven ; they are the partisans of liberty, not only as the source of the noblest virtues, but more especially as the root of all solid advantages ; and they sincerely desire to extend its sway, and to impart its blessings to mankind. It is natural that they should hasten to invoke the assistance of religion, for they must know that liberty cannot be established without morality, nor morality without faith ; but they have seen religion in the ranks of their adversaries, and they inquire no further ; some of them attack it openly, and the remainder are afraid to defend it.

In former ages slavery has been advocated by the venal and slavish-minded, whilst the independent and the warm-hearted were struggling without hope to save the liberties of mankind. But men of high and generous characters are now to be met with, whose opinions are at variance with their inclinations, and who praise that servility which they have themselves never known. Others, on the contrary, speak in the name of liberty, as if they were able to feel its sanctity and its majesty, and loudly

claim for humanity those rights which they have always disowned. .

There are virtuous and peaceful individuals whose pure morality, quiet habits, affluence, and talents fit them to be the leaders of the surrounding population ; their love of their country is sincere, and they are prepared to make the greatest sacrifices to its welfare, but they confound the abuses of civilization with its benefits, and the idea of evil is inseparable in their minds from that of novelty.

Not far from this class is another party, whose object is to materialize mankind, to hit upon what is expedient without heeding what is just, to acquire knowledge without faith, and prosperity apart from virtue ; assuming the title of the champions of modern civilization, and placing themselves in a station which they usurp with insolence, and from which they are driven by their own unworthiness.

Where are we then ?

. The religionists are the enemies of liberty, and the friends of liberty attack religion ; the high-minded and the noble advocate subjection, and the meanest and most servile minds preach independence ; honest and enlightened citizens are opposed to all progress, whilst men without patriotism and

without principles are the apostles of civilization and of intelligence.

Has such been the fate of the centuries which have preceded our own? and has man always inhabited a world, like the present, where nothing is linked together, where virtue is without genius, and genius without honour; where the love of order is confounded with a taste for oppression, and the holy rites of freedom with a contempt of law; where the light thrown by conscience on human actions is dim, and where nothing seems to be any longer forbidden or allowed, honourable or shameful, false or true?

I cannot, however, believe that the Creator made man to leave him in an endless struggle with the intellectual miseries which surround us: God destines a calmer and a more certain future to the communities of Europe; I am unacquainted with his designs, but I shall not cease to believe in them because I cannot fathom them, and I had rather mistrust my own capacity than his justice.

There is a country in the world where the great revolution which I am speaking of seems nearly to have reached its natural limits; it has been effected with ease and simplicity, say rather that this coun-

try has attained the consequences of the democratic revolution which we are undergoing, without having experienced the revolution itself.

The emigrants who fixed themselves on the shores of America in the beginning of the seventeenth century, severed the democratic principle from all the principles which repressed it in the old communities of Europe, and transplanted it unalloyed to the New World. It has there been allowed to spread in perfect freedom, and to put forth its consequences in the laws by influencing the manners of the country.

It appears to me beyond a doubt that sooner or later we shall arrive, like the Americans, at an almost complete equality of conditions. But I do not conclude from this, that we shall ever be necessarily led to draw the same political consequences which the Americans have derived from a similar social organization. I am far from supposing that they have chosen the only form of government which a democracy may adopt; but the identity of the efficient cause of laws and manners in the two countries is sufficient to account for the immense interest we have in becoming acquainted with its effects in each of them.

It is not, then, merely to satisfy a legitimate curiosity that I have examined America; my wish has

been to find instruction by which we may ourselves profit. Whoever should imagine that I have intended to write a panegyric would be strangely mistaken, and on reading this book he will perceive that such was not my design: nor has it been my object to advocate any form of government in particular, for I am of opinion that absolute excellence is rarely to be found in any legislation; I have not even affected to discuss whether the social revolution, which I believe to be irresistible, is advantageous or prejudicial to mankind; I have acknowledged this revolution as a fact already accomplished or on the eve of its accomplishment; and I have selected the nation, from amongst those which have undergone it, in which its development has been the most peaceful and the most complete, in order to discern its natural consequences, and, if it be possible, to distinguish the means by which it may be rendered profitable. I confess that in America I saw more than America; I sought the image of democracy itself, with its inclinations, its character, its prejudices, and its passions, in order to learn what we have to fear or to hope from its progress.

In the first part of this work I have attempted to show the tendency given to the laws by the democracy of America, which is abandoned almost with-

out restraint to its instinctive propensities ; and to exhibit the course it prescribes to the Government and the influence it exercises on affairs. I have sought to discover the evils and the advantages, which it produces. I have examined the precautions used by the Americans to direct it; as well as those which they have not adopted, and I have undertaken to point out the causes which enable it to govern society:

It was my intention to depict, in a second part, the influence which the equality of conditions and the rule of democracy exercise on the civil society, the habits, the ideas, and the manners of the Americans; I begin, however, to feel less ardour for the accomplishment of this project, since the excellent work of my friend and travelling companion M. de Beaumont has been given to the world¹. I do not know whether I have succeeded in making known what I saw in America, but I am certain that such has been my sincere desire, and that I have never, knowingly, moulded facts to ideas, instead of ideas to facts.

Whenever a point could be established by the aid of written documents, I have had recourse to the original text, and to the most authentic and ap-

¹ This work is entitled *Marie, ou l'Esclavage aux Etats-Unis*.

proved works'. I have cited my authorities in the notes, and any one may refer to them. Whenever an opinion, a political custom, or a remark on the manners of the country was concerned, I endeavoured to consult the most enlightened men I met with. If the point in question was important or doubtful, I was not satisfied with one testimony, but I formed my opinion on the evidence of several witnesses. Here the reader must necessarily believe me upon my word. I could frequently have quoted names which are either known to him, or which deserve to be so, in proof of what I advance; but I have carefully abstained from this practice. A stranger frequently hears important truths at the fire-side of his host, which the latter would perhaps conceal even from the ear of friendship; he consoles himself with his guest for the silence to which he is restricted, and the shortness of the traveller's stay

Legislative and administrative documents have been furnished me with a degree of politeness which I shall always remember with gratitude. Amongst the American functionaries who thus favoured my inquiries I am proud to name Mr. Edward Livingston, then Secretary of State, and late American Minister at Paris. During my stay at the Session of Congress Mr. Livingston was kind enough to furnish me with the greater part of the documents I possess relative to the Federal Government. Mr. Livingston is one of those rare individuals whom one loves, respects, and admires from their writings, and to whom one is happy to incur the debt of gratitude on further acquaintance.

takes away all fear of his indiscretion. I carefully noted every conversation of this nature as soon as it occurred, but these notes will never leave my writing-case ; I had rather injure the success of my statements than add my name to the list of those strangers who repay the generous hospitality they have received by subsequent chagrin and annoyance.

I am aware that, notwithstanding my care, nothing will be easier than to criticise this book, if any one ever chooses to criticise it.

Those readers who may examine it closely will discover the fundamental idea which connects the several parts together. But the diversity of the subjects I have had to treat is exceedingly great, and it will not be difficult to oppose an isolated fact to the body of facts which I quote, or an isolated idea to the body of ideas I put forth. I hope to be read in the spirit which has guided my labours, and that my book may be judged by the general impression it leaves, as I have formed my own judgement not on any single reason, but upon the mass of evidence.

It must not be forgotten that the author who wishes to be understood is obliged to push all his ideas to their utmost theoretical consequences, and often to the verge of what is false or impracticable ;

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the north by the Arctic Pole, and by the two great Oceans on the east and west. It stretches towards the south, forming a triangle, whose irregular sides meet at length below the great lakes of Canada.

The second region begins where the other terminates, and includes all the remainder of the continent.

The one slopes gently towards the Pole, the other towards the Equator.

The territory comprehended in the first region descends towards the north with so imperceptible a slope, that it may almost be said to form a level plain. Within the bounds of this immense tract of country there are neither high mountains nor deep valleys. Streams meander through it irregularly; great rivers mix their currents, separate and meet again, disperse and form vast marshes, losing all trace of their channels in the labyrinth of waters they have themselves created; and thus at length, after innumerable windings, fall into the Polar seas. The great lakes which bound this first region are not walled in, like most of those in the Old World, between hills and rocks. Their banks are flat, and rise but a few feet above the level of their waters; each of them thus forming a vast bowl filled to the brim. The slightest change in the structure of the globe would cause their waters to rush either towards the Pole or, to the Tropical Sea.

The second region is more varied on its surface,

and better suited for the habitation of man. Two long chains of mountains divide it from one extreme to the other; the Alleghany ridge takes the form of the shores of the Atlantic Ocean; the other is parallel with the Pacific.

The space which lies between these two chains of mountains contains 1,341,649 square miles¹. Its surface is therefore about six times as great as that of France.

This vast territory, however, forms a single valley, one side of which descends gradually from the rounded summits of the Alleghanies, while the other rises in an uninterrupted course towards the tops of the Rocky Mountains.

At the bottom of the valley flows an immense river, into which the various streams issuing from the mountains fall from all parts. In memory of their native land, the French formerly called this river the St. Louis. The Indians, in their pompous language, have named it the Father of Waters, or the Mississippi.

The Mississippi takes its source above the limit of the two great regions of which I have spoken, not far from the highest point of the table-land where they unite. Near the same spot rises another river², which empties itself into the Polar seas. The course of the Mississippi is at first dubious: it winds several times towards the north, from whence it rose; and at length, after having been delayed

¹ 'Darby's View of the United States.' ² The Red River.

in lakes and marshes, it flows slowly onwards to the south.

Sometimes quietly gliding along the argillaceous bed which nature has assigned to it ; sometimes swollen by storms, the Mississippi waters 2500 miles in its course'. At the distance of 1364 miles from its mouth this river attains an average depth of fifteen feet ; and it is navigated by vessels of 300 tons burden for a course of nearly 500 miles. Fifty-seven large navigable rivers contribute to swell the waters of the Mississippi ; amongst others, the Missouri, which traverses a space of 2500 miles, the Arkansas of 1300 miles, the Red River 1000 miles ; four whose course is from 800 to 1000 miles in length, viz. the Illinois, the St. Peter's, the St. Francis, and the Moingona ; besides a countless multitude of rivulets which unite from all parts their tributary streams.

The valley which is watered by the Mississippi seems formed to be the bed of this mighty river, which like a god of antiquity dispenses both good and evil in its course. On the shores of the stream nature displays an inexhaustible fertility ; in proportion as you recede from its banks, the powers of vegetation languish, the soil becomes poor, and the plants that survive have a sickly growth. Nowhere have the great convulsions of the globe left more evident traces than in the valley of the Mississippi : the whole aspect of the country shows the powerful effects of water, both by its fertility and by its

barrenness. The waters of the primæval ocean accumulated enormous beds of vegetable mould in the valley, which they levelled as they retired. Upon the right shore of the river are seen immense plains, as smooth as if the husbandman had passed over them with his roller. As you approach the mountains, the soil becomes more and more unequal and sterile; the ground is, as it were, pierced in a thousand places by primitive rocks, which appear like the bones of a skeleton whose flesh is partly consumed. The surface of the earth is covered with a granitic sand and huge irregular masses of stone, among which a few plants force their growth, and give the appearance of a green field covered with the ruins of a vast edifice. These stones and this sand discover, on examination, a perfect analogy with those which compose the arid and broken summits of the Rocky Mountains. The flood of waters which washed the soil to the bottom of the valley, afterwards carried away portions of the rocks themselves; and these, dashed and bruised against the neighbouring cliffs, were left scattered like wrecks at their feet.

The Valley of the Mississippi is, upon the whole, the most magnificent dwelling-place prepared by God for man's abode; and yet, it may be said that at present it is but a mighty desert.

On the eastern side of the Alleghanies, between the base of these mountains and the Atlantic Ocean,

¹ See Appendix, A.

there lies a long ridge of rocks and sand, which the sea appears to have left behind as it retired. The mean breadth of this territory does not exceed one hundred miles ; but it is about nine hundred miles in length. This part of the American continent has a soil which offers every obstacle to the husbandman, and its vegetation is scanty and unvaried.

Upon this inhospitable coast the first united efforts of human industry were made. This tongue of arid land was the cradle of those English colonies which were destined one day to become the United States of America. The centre of power still remains there ; whilst in the backward States the true elements of the great people to whom the future control of the continent belongs are secretly springing up.

When the Europeans first landed on the shores of the Antilles, and afterwards on the coast of South America, they thought themselves transported into those fabulous regions of which poets had sung. The sea sparkled with phosphoric light, and the extraordinary transparency of its waters discovered to the view of the navigator all that had hitherto been hidden in the deep abyss¹. Here and there appeared little islands perfumed with odoriferous

¹ Malte Brun tells us (vol. v. p. 726,) that the water of the Caribbean sea is so transparent, that corals and fish are discernible at a depth of sixty fathoms. The ship seemed to float in air, the navigator became giddy as his eye penetrated through the crystal flood, and beheld submarine gardens, or beds of shells, or gilded fishes gliding among tufts and thickets of sea-weed.

plants, and resembling baskets of flowers floating on the tranquil surface of the ocean. Every object which met the sight, in this enchanting region, seemed prepared to satisfy the wants, or contribute to the pleasures of man. Almost all the trees were loaded with nourishing fruits, and those which were useless as food delighted the eye by the brilliancy and variety of their colours. In groves of fragrant lemon-trees, wild figs, flowering-myrtles, acacias, and oleanders, which were hung with festoons of various climbing-plants, covered with flowers, a multitude of birds unknown in Europe displayed their bright plumage, glittering with purple and azure, and mingled their warbling in the harmony of a world teeming with life and motion.

Underneath this brilliant exterior, death was concealed. The air of these climates had so enervating an influence, that man, completely absorbed by present enjoyment, was rendered regardless of the future.

North America appeared under a very different aspect: there, everything was grave, serious, and solemn; it seemed created to be the domain of intelligence, as the South was that of sensual delight. A turbulent and foggy ocean washed its shores. It was girded round by a belt of granitic rocks, or by wide plains of sand. The foliage of its woods was dark and gloomy; for they were composed of firs, larches, evergreen oaks, wild olive-trees, and laurels.

See Appendix, B.

Beyond this outer belt lay the thick shades of the central forests, where the largest trees which are produced in the two hemispheres grow side by side. The plane, the catalpa, the sugar-maple, and the Virginian poplar, mingled their branches with those of the oak, the beech, and the lime.

For these, as in the forests of the Old World, destruction was perpetually going on. The ruins of vegetation were heaped upon each other; but there was no labouring hand to remove them, and their decay was not rapid enough to make room for the continual work of reproduction. Climbing-plants, grasses, and other herbs forced their way through the mass of dying trees; they crept along their bending trunks, found nourishment in their dusty cavities, and a passage beneath the lifeless bark. Thus decay gave its assistance to life, and their respective productions were mingled together. The depths of these forests were gloomy and obscure, and a thousand rivulets, undirected in their course by human industry, preserved in them a constant moisture. It was rare to meet with flowers, wild fruits, or birds, beneath their shades. The fall of a tree overthrown by age, the rushing torrent of a cataract, the lowing of the buffalo, and the howling of the wind, were the only sounds which broke the silence of nature.

To the east of the great river, the woods almost disappeared; in their stead were seen prairies of immense extent. Whether Nature in her infinite

variety had denied the germs of trees to these fertile plains, or whether they had once been covered with forests, subsequently destroyed by the hand of man, is a question which neither tradition nor scientific research has been able to resolve.

• These immense deserts were not, however, devoid of human inhabitants. Some wandering tribes had been for ages scattered among the forest shades or the green pastures of the prairie. • From the mouth of the St. Lawrence to the Delta of the Mississippi, and from the Atlantic to the Pacific Ocean, these savages possessed certain points of resemblance which bore witness of their common origin: but at the same time they differed from all other known races of men¹: they were neither white like the Europeans, nor yellow like most of the Asiatics, nor black like the negroes. Their skin was reddish brown, their hair long and shining, their lips thin, and their cheekbones very prominent. The languages spoken by the North American tribes were various as far as regarded their words, but

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•¹ With the progress of discovery, some resemblance has been found to exist between the physical conformation, the language and the habits of the Indians of North America, and those of the Tongous, Mantchous, Moguls, Tatars, and other wandering tribes of Asia. The land occupied by these tribes is not very distant from Behring's Strait; which allows of the supposition, that at a remote period they gave inhabitants to the desert continent of America. But this is a point which has not yet been clearly elucidated by science. See Malte Brun, vol. v.; the works of Humboldt; Fischer, 'Conjecture sur l'Origine des Américains'; Adair, 'History of the American Indians'.

they were subject to the same grammatical rules. These rules differed in several points from such as had been observed to govern the origin of language.

The idiom of the Americans seemed to be the product of new combinations; and bespoke an effort of the understanding of which the Indians of our days would be incapable'.

The social state of these tribes differed also in many respects from all that was seen in the Old World. They seemed to have multiplied freely in the midst of their deserts, without coming in contact with other races more civilized than their own. Accordingly, they exhibited none of those indistinct, incoherent notions of right and wrong, none of that deep corruption of manners which is usually joined with ignorance and rudeness among nations which, after advancing to civilization, have relapsed into a state of barbarism. The Indian was indebted to no one but himself; his virtues, his vices, and his prejudices were his own work; he had grown up in the wild independence of his nature.

“ If, in polished countries, the lowest of the people are rude and uncivil, it is not merely because they are poor and ignorant, but that, being so, they are in daily contact with rich and enlightened men. The sight of their own hard lot and of their weakness, which are daily contrasted with the happiness and power of some of their fellow-creatures, excites in their hearts at the same time the sentiments of

¹ See Appendix, C.

anger and of fear : the consciousness of their inferiority and of their dependence irritates while it humiliates them. This state of mind displays itself in their manners and language ; they are at once insolent and servile. The truth of this is easily proved by observation ; the people are more rude in aristocratic countries than elsewhere ; in opulent cities than in rural districts. In those places where the rich and powerful are assembled together, the weak and the indigent feel themselves oppressed by their inferior condition. Unable to perceive a single chance of regaining their equality, they give up to despair, and allow themselves to fall below the dignity of human nature.

This unfortunate effect of the disparity of conditions is not observable in savage life : the Indians, although they are ignorant and poor, are equal and free.

At the period when Europeans first came among them, the natives of North America were ignorant of the value of riches, and indifferent to the enjoyments which civilized man procures to himself by their means. Nevertheless there was nothing coarse in their demeanour ; they practised an habitual reserve, and a kind of aristocratic politeness.

Mild and hospitable when at peace, though merciless in war beyond any known degree of human ferocity, the Indian would expose himself to die of hunger in order to succour the stranger who asked admittance by night at the door of his hut,—yet

he could tear in pieces with his hands the still quivering limbs of his prisoner. • The famous republics of antiquity never gave examples of more unshaken courage, more haughty spirits, or more intractable love of independence, than were hidden in former times among the wild forests of the New World¹. The Europeans produced no great impression when they landed upon the shores of North America: their presence engendered neither envy nor fear. What influence could they possess over such men as we have described? The Indian could live without wants, suffer without complaint, and pour out his death-song at the stake². Like all the other members of the great human family, these savages believed in the existence of a better world, and adored, under different names, God, the creator of the universe. Their notions on the great intel-

¹ We learn from President Jefferson's 'Notes upon Virginia', p. 148, that among the Iroquois, when attacked by a superior force, aged men refused to fly, or to survive the destruction of their country; and they braved death like the ancient Romans when their capital was sacked by the Gauls. Further on, p. 150, he tells us that there is no example of an Indian, who, having fallen into the hands of his enemies, begged for his life; on the contrary, the captive sought to obtain death at the hands of his conquerors by the use of insult and provocation.

² See 'Histoire de la Louisiane', by Lepage Dupratz; Charlevoix, 'Histoire de la Nouvelle France'; 'Lettres du Rev. G. Hecwelder'; 'Transactions of the American Philosophical Society', v. 1.; Jefferson's 'Notes on Virginia', p. 135—190. What is said by Jefferson is of especial weight, on account of the personal merit of the writer, of his peculiar position, and of the matter-of-fact age in which he lived.

lectual truths were in general simple and philosophical'.

Although we have here traced the character of a primitive people, yet it cannot be doubted that another people, more civilized and more advanced in all respects, had preceded it in the same regions.

An obscure tradition which prevailed among the Indians, to the north of the Atlantic, informs us that these very tribes formerly dwelt on the west side of the Mississippi. Along the banks of the Ohio, and throughout the central valley, there are frequently found, at this day, *tumuli* raised by the hands of men. On exploring these heaps of earth to their centre, it is usual to meet with human bones, strange instruments, arms and utensils of all kinds, made of a metal, or destined for purposes, unknown to the present race.

The Indians of our time are unable to give any information relative to the history of this unknown people. Neither did those who lived three hundred years ago, when America was first discovered, leave any accounts from which even an hypothesis could be formed: Tradition,—that perishable, yet ever-renewed monument of the pristine world,—throws no light upon the subject. It is an undoubted fact, however, that in this part of the globe thousands of our fellow-beings had lived. When they came hither, what was their origin, their destiny, their history, and how they perished, no one can tell.

See Appendix, D.

How strange does it appear that nations have existed, and afterwards so completely disappeared from the earth that the remembrance of their very names is effaced: their languages are lost; their glory is vanished like a sound without an echo; but perhaps there is not one which has not left behind it a tomb in memory of its passage. The most durable monument of human labour is that which recalls the wretchedness and nothingness of man.

Although the vast country which we have been describing was inhabited by many indigenous tribes, it may justly be said at the time of its discovery by Europeans to have formed one great desert. The Indians occupied, without possessing it. It is by agricultural labour that man appropriates the soil, and the early inhabitants of North America lived by the produce of the chase. Their implacable prejudices, their uncontrolled passions, their vices, and still more perhaps their savage virtues, consigned them to inevitable destruction. The ruin of these nations began from the day when Europeans landed on their shores: it has proceeded ever since, and we are now witnessing the completion of it. They seem to have been placed by Providence amidst the riches of the New World to enjoy them for a season, and then surrender them. Those coasts, so admirably adapted for commerce and industry, those wide and deep rivers; that inexhaustible valley of the Mississippi; the whole continent, in short,

seemed prepared to be the abode of a great nation, yet unborn.

In that land the great experiment was to be made by civilized man, of the attempt to construct society upon a new basis ; and it was there, for the first time, that theories hitherto unknown, or deemed impracticable, were to exhibit a spectacle for which the world had not been prepared by the history of the past.

CHAPTER II.

ORIGIN OF THE ANGLO-AMERICANS, AND ITS IMPORTANCE IN RELATION TO THEIR FUTURE CONDITION.

Utility of knowing the origin of nations in order to understand their social condition and their laws.—America the only country in which the starting-point of a great people has been clearly observable.—In what respects all who emigrated to British America were similar.—In what they differed.—Remark applicable to all the Europeans who established themselves on the shores of the New World.—Colonization of Virginia.—Colonization of New England.—Original character of the first inhabitants of New England.—Their arrival.—Their first laws.—Their social contract.—Penal code borrowed from the Hebrew legislation.—Religious fervour.—Republican spirit.—Intimate union of the spirit of religion with the spirit of liberty.

AFTER the birth of a human being his early years are obscurely spent in the toils or pleasures of childhood. As he grows up the world receives him, when his manhood begins, and he enters into contact with his fellows. He is then studied for the first time, and it is imagined that the germ of the vices and the virtues of his maturer years is then formed.

This, if I am not mistaken, is a great error. We must begin higher up; we must watch the infant in his mother's arms; we must see the first

images which the external world casts upon the dark mirror of his mind; the first occurrences which he witnesses; we must hear the first words which awaken the sleeping powers of thought, and stand by his earliest efforts, if we would understand the prejudices, the habits, and the passions which will rule his life. The entire man is, so to speak, to be seen in the cradle of the child.

The growth of nations presents something analogous to this: they all bear some marks of their origin; and the circumstances which accompanied their birth and contributed to their rise, affect the whole term of their being.

If we were able to go back to the elements of states, and to examine the oldest monuments of their history, I doubt not that we should discover the primary cause of the prejudices, the habits, the ruling passions, and in short of all that constitutes what is called the national character: we should then find the explanation of certain customs which now seem at variance with prevailing manners, of such laws as conflict with established principles, and of such incoherent opinions as are here and there to be met with in society, like those fragments of broken chains which we sometimes see hanging from the vault of an edifice, and supporting nothing. This might explain the destinies of certain nations which seem borne along by an unknown force to ends of which they themselves are ignorant. But hitherto facts have been wanting

to researches of this kind : the spirit of inquiry has only come upon communities in their latter days ; and when they at length turned their attention to contemplate their origin, time had already obscured it, or ignorance and pride adorned it with truth-concealing fables.

America is the only country in which it has been possible to witness the natural and tranquil growth of society, and where the influence exercised on the future condition of states by their origin is clearly distinguishable.

At the period when the peoples of Europe landed in the New World, their national characteristics were already completely formed ; each of them had a physiognomy of its own ; and as they had already attained that stage of civilization at which men are led to study themselves, they have transmitted to us a faithful picture of their opinions, their manners, and their laws. The men of the sixteenth century are almost as well known to us as our contemporaries. America consequently exhibits in the broad light of day the phænomena which the ignorance or rudeness of earlier ages conceals from our researches. Near enough to the time when the states of America were founded to be accurately acquainted with their elements, and sufficiently removed from that period to judge of some of their results, the men of our own day seem destined to see further than their predecessors into the series of human events. Providence has

given us a torch which our forefathers did not possess, and has allowed us to discern fundamental causes in the history of the world which the obscurity of the past concealed from them.

If we carefully examine the social and political state of America after having studied its history, we shall remain perfectly convinced that not an opinion, not a custom, not a law, I may even say not an event, is upon record which the origin of that people will not explain. The readers of this book will find the germ of all that is to follow in the present chapter, and the key to almost the whole work.

The emigrants who came at different periods to occupy the territory now covered by the American Union, differed from each other in many respects; their aim was not the same, and they governed themselves on different principles.

These men had, however, certain features in common, and they were all placed in an analogous situation. The tie of language is perhaps the strongest and the most durable that can unite mankind. All the emigrants spoke the same tongue; they were all offsets from the same people. Born in a country which had been agitated for centuries by the struggles of faction, and in which all parties had been obliged in their turn to place themselves under the protection of the laws, their political education had been perfected in this rude school, and they were more conversant with the notions

of right, and the principles of true freedom, than the greater part of their European contemporaries. At the period of the first emigrations, the parish system, that fruitful germ of free institutions, was deeply rooted in the habits of the English; and with it the doctrine of the sovereignty of the people had been introduced even into the bosom of the monarchy of the House of Tudor.

The religious quarrels which have agitated the Christian world were then rife. England had plunged into the new order of things with headlong vehemence. The character of its inhabitants, which had always been sedate and reflecting, became argumentative and austere. General information had been increased by intellectual debate, and the mind had received a deeper cultivation. Whilst religion was the topic of discussion, the morals of the people were reformed. All these national features are more or less discoverable in the physiognomy of those adventurers who came to seek a new home on the opposite shores of the Atlantic.

Another remark, to which we shall hereafter have occasion to recur, is applicable not only to the English, but to the French, the Spaniards, and all the Europeans who successively established themselves in the New World. All these European colonies contained the elements, if not the development, of a complete democracy. Two causes led to this result. It may safely be advanced, that on leaving the mother-country, the emigrants had in

general no notion of superiority over one another. The happy and the powerful do not go into exile; and there are no surer guarantees of equality among men than poverty and misfortune. It happened, however, on several occasions that persons of rank were driven to America by political and religious quarrels. Laws were made to establish a gradation of ranks; but it was soon found that the soil of America was entirely opposed to a territorial aristocracy. To bring that refractory land into cultivation, the constant and interested exertions of the owner himself were necessary; and when the ground was prepared, its produce was found to be insufficient to enrich a master and a farmer at the same time. The land was then naturally broken up into small portions, which the proprietor cultivated for himself. Land is the basis of an aristocracy, which clings to the soil that supports it; for it is not by privileges alone, nor by birth, but by landed property handed down from generation to generation, that an aristocracy is constituted. A nation may present immense fortunes and extreme wretchedness, but unless those fortunes are territorial, there is no aristocracy, but simply the class of the rich and that of the poor.

All the British colonies had then a great degree of similarity at the epoch of their settlement. All of them, from their first beginning, seemed destined to witness the growth, not of the aristocratic liberty of their mother-country, but of that freedom of the

middle and lower orders of which the history of the world had as yet furnished no complete example.

In this general uniformity several striking differences were however discernible, which it is necessary to point out. Two branches may be distinguished in the Anglo-American family which have hitherto grown up without entirely commingling; the one in the South, the other in the North.

Virginia received the first English colony; the emigrants took possession of it in 1607. The idea that mines of gold and silver are the sources of national wealth was at that time singularly prevalent in Europe; a fatal delusion, which has done more to impoverish the nations which adopted it, and has cost more lives in America, than the united influence of war and bad laws. The men sent to Virginia were seekers of gold, adventurers without resources and without character, whose turbulent and restless spirit endangered the infant colony^a and rendered its progress uncertain. The artisans and agriculturists arrived afterwards; and although they were a more moral and orderly race

¹ The charter granted by the Crown of England in 1609 stipulated, amongst other conditions, that the adventurers should pay to the Crown a fifth of the produce of all gold and silver mines. See Marshall's 'Life of Washington', vol. i. p. 18—66.

² A large portion of the adventurers, says Stith, (History of Virginia,) were unprincipled young men of family, whom their parents were glad to ship off, discharged servants, fraudulent bankrupts, or debauchees; and others of the same class, people more apt to pillage and destroy than to assist the settlement, were the seditious chiefs who easily led this band into every kind of ex-

of men, they were in nowise above the level of the inferior classes in England¹. No lofty conceptions, no intellectual system directed the foundation of these new settlements. The colony was scarcely established when slavery was introduced², and this was the main circumstance which has exercised so prodigious an influence on the character, the laws, and all the future prospects of the South.

Slavery, as we shall afterwards show, dishonours labour; it introduces idleness into society, and, with idleness, ignorance and pride, luxury and distress. It enervates the powers of the mind, and benumbs the activity of man. The influence of slavery, united to the English character, explains the manners and the social condition of the Southern States.

In the North, the same English foundation was modified by the most opposite shades of character; and here I may be allowed to enter into some details. The two or three main ideas which constitute the basis of the social theory of the United States were first combined in the Northern British extravagance and excess. See for the history of Virginia the following works:—

‘History of Virginia, from the first Settlements in the year 1624,’ by Smith.

‘History of Virginia,’ by William Stith.

‘History of Virginia, from the earliest period,’ by Beverley.

¹ It was not till some time later that a certain number of rich English capitalists came to fix themselves in the colony.

² Slavery was introduced about the year 1620 by a Dutch vessel which landed twenty negroes on the banks of the river James. See Chalmer.

colonies, more generally denominated the states of New England¹. The principles of New England spread at first to the neighbouring states ; they then passed successively to the more distant ones ; and at length they imbued the whole Confederation. They now extend their influence beyond its limits over the whole American world. The civilization of New England has been like a beacon lit upon a hill, which after it has diffused its warmth around, tinges the distant horizon with its glow.

The foundation of New England was a novel spectacle, and all the circumstances attending it were singular and original. The large majority of colonies have been first inhabited either by men without education and without resources, driven by their poverty and their misconduct from the land which gave them birth, or by speculators and adventurers greedy of gain. Some settlements cannot even boast so honourable an origin ; St. Domingo was founded by buccaneers ; and, at the present day, the criminal courts of England supply the population of Australia.

The settlers who established themselves on the shores of New England all belonged to the more independent classes of their native country. Their union on the soil of America at once presented the

¹ The States of New England are those situated to the east of the Hudson ; they are now six in number : 1. Connecticut ; 2. Rhode Island ; 3. Massachusetts ; 4. Vermont ; 5. New Hampshire ; 6. Maine.

singular phænomenon of a society containing neither lords nor common people, neither rich nor poor. These men possessed, in proportion to their number, a greater mass of intelligence than is to be found in any European nation of our own time. All, without a single exception, had received a good education, and many of them were known in Europe for their talents and their acquirements. The other colonies had been founded by adventurers without family; the emigrants of New England brought with them the best elements of order and morality, they landed in the desert accompanied by their wives and children. But what most especially distinguished them was the aim of their undertaking. They had not been obliged by necessity to leave their country, the social position they abandoned was one to be regretted, and their means of subsistence were certain. Nor did they cross the Atlantic to improve their situation or to increase their wealth; the call which summoned them from the comforts of their homes was purely intellectual; and in facing the inevitable sufferings of exile, their object was the triumph of an idea.

The emigrants, or, as they deservedly styled themselves, the Pilgrims, belonged to that English sect, the austerity of whose principles had acquired for them the name of Puritans. Puritanism was not merely a religious doctrine, but it corresponded in many points with the most absolute democratic and republican theories. It was this tendency which

had aroused its most dangerous adversaries. Persecuted by the Government of the mother-country, and disgusted by the habits of a society opposed to the rigour of their own principles, the Puritans went forth to seek some rude and unfrequented part of the world; where they could live according to their own opinions, and worship God in freedom.

A few quotations will throw more light upon the spirit of these pious adventurers than all we can say of them. Nathaniel Morton¹, the historian of the first years of the Settlement, thus opens his subject :

“ Gentle Reader,

“ I have for some length of time looked upon it as a duty incumbent, especially on the immediate successors of those that have had so large experience of those many memorable and signall demonstrations of God’s goodness, viz. the first beginners of this Plantation in New England, to commit to writing his gracious dispensations on that behalf; having so many inducements thereunto, not onely otherwise, but so plentifully in the Sacred Scriptures : that so, what we have seen, and what our fathers have told us, (Psalm lxxviii. 3, 4,) we may not hide from our children, shewing to the generations to come the praises of the Lord; that especially the seed of Abraham his servant, and the children of Jacob his chosen (Psalm cv. 5, 6,) may

¹ ‘New England’s Memorial’, p. 13. Boston, 1826. See also ‘Hutchinson’s History’, vol. ii. p. 440.

remember his marvellous works in the beginning and progress of the planting of New England, his wonders and the judgements of his mouth; how that God brought a vine into this wilderness; that He cast out the heathen, and planted it; that He made room for it and caused it to take deep root; and it filled the land (Psalm lxxx. 8, 9.). And not onely so, but also that He hath guided his people by his strength to his holy habitation, and planted them in the mountain of his inheritance in respect of precious Gospel-enjoyments: and that as especially God may have the glory of all unto whom it is most due; so also some rays of glory may reach the names of those blessed Saints, that were the main instruments and the beginning of this happy enterprise.”

It is impossible to read this opening paragraph without an involuntary feeling of religious awe; it breathes the very savour of Gospel antiquity. The sincerity of the author heightens his power of language. The band which to his eyes was a mere party of adventurers gone forth to seek their fortune beyond seas, appears to the reader as the germ of a great nation wafted by Providence to a predestined shore.

The author thus continues his narrative of the departure of the first pilgrims.

“ So they left that goodly and pleasant city of Leyden¹, which had been their resting-place for

¹ The emigrants were, for the most part, godly Christians from the North of England, who had quitted their native country be-

above eleven years ; but they knew that they were pilgrims and strangers here below, and looked not much on these things, but lifted up their eyes to Heaven, their dearest country, where God hath prepared for them a city (Heb. xi. 16.), and therein quieted their spirits. When they came to Delft-Haven they found the ship and all things ready ; and such of their friends as could not come with them, followed after them, and sundry came from Amsterdam to see them shipt, and to take their leaves of them. One night was spent with little sleep with the most, but with friendly entertainment and Christian discourse, and other real expressions of true Christian love. The next day they went on board, and their friends with them, where truly doleful was the sight of that sad and mournful parting, to hear what sighs and sobs and prayers did sound amongst them ; what tears did gush from every eye, and pithy speeches pierced each other's heart, that sundry of the Dutch strangers that stood on the Key as spectators could not refrain from tears. But the tide (which stays for

cause they were " studious of reformation, and entered into covenant to walk with one another according to the primitive pattern of the word of God." They emigrated to Holland, and settled in the city of Leyden in 1610, where they abode, being lovingly respected by the Dutch, for many years : they left it in 1620 for several reasons, the last of which was that their posterity would in a few generations become Dutch, and so lose their interest in the English nation ; they being desirous rather to enlarge His Majesty's dominions, and to live under their natural prince.—*Translator's Note.*

no man) calling them away, that were thus loth to depart, their Reverend Pastor falling down on his knees, and they all with him, with watery cheeks commended them with most fervent prayers unto the Lord and his blessing; and then, with mutual embraces and many tears, they took their leaves one of another, which proved to be the last leave to many of them."

The emigrants were about 150 in number, including the women and the children. Their object was to plant a colony on the shores of the Hudson; but after having been driven about for some time in the Atlantic Ocean, they were forced to land on that arid coast of New England which is now the site of the town of Plymouth. The rock is still shown on which the pilgrims disembarked¹.

"But before we pass on," continues our historian, "let the reader with me make a pause and seriously consider this poor people's present condition, the more to be raised up to admiration of God's goodness towards them in their preservation: for being now passed the vast ocean, and a sea of troubles before them in expectation, they had now no friends

¹ This rock is become an object of veneration in the United States. I have seen bits of it carefully preserved in several towns of the Union. Does not this sufficiently show that all human power and greatness is in the soul of man? Here is a stone which the feet of a few outcasts pressed for an instant, and this stone becomes famous; it is treasured by a great nation, its very dust is shared as a relic: and what is become of the gateways of a thousand palaces?

to welcome them, no inns to entertain or refresh them, no houses, or much less towns to repair unto to seek for succour : and for the season it was winter, and they that know the winters of the country know them to be sharp and violent, subject to cruel and fierce storms, dangerous to travel to known places, much more to search unknown coasts. Besides, what could they see but a hideous and desolate wilderness, full of wilde beasts, and wilde men ? and what multitudes of tæm theré weré, they then knew not : for which way soever they turned their eyes (save upward to Heaven) they could have but little solace or content in respect of any outward object ; for summer being ended, all things stand in appearance with a weather-beaten face, and the whole counrty full of woods and thickets represented a wilt and savage hue ; if they looked behind them, there was the mighty ocean which they had passed, and was now as a main bar or gulph to separate them from all the civil parts of the world."

It must not be imagined that the piety of the Puritans was of a merely speculative kind, or that it took no cognisance of the course of worldly affairs. Puritanism, as I have already remarked, was scarcely less a political than a religious doctrine. No sooner had the emigrants landed on the barren coast, described by Nathaniel Morton, than their first care was to constitute a society, by passing the following Act¹ :

¹ 'New England's Memorial', p. 37.

· “IN THE NAME OF GOD, AMEN! We, whose names are underwritten, the loyal subjects of our dread Sovereign Lord King James, &c. &c., Having undertaken for the glory of God, and advancement of the Christian Faith, and the honour of our King and country, a voyage to plant the first colony in the northern parts of Virginia; Do by these presents solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politick, for our better ordering and preservation, and furtherance of the ends aforesaid: and by virtue hereof do enact, constitute and frame such just and equal laws, ordinances, acts, constitutions, and officers, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience,” &c.¹

This happened in 1620, and from that time forwards the emigration went on. The religious and political passions which ravaged the British Empire during the whole reign of Charles I., drove fresh crowds of sectarians every year to the shores of America. In England the stronghold of Puritanism was in the middle classes, and it was from the middle classes that the majority of the emigrants

¹ The emigrants who founded the state of Rhode Island in 1638, those who landed at New Haven in 1637, the first settlers in Connecticut in 1639, and the founders of Providence in 1640, began in like manner by drawing up a social contract, which was submitted to the approval of all the interested parties. See ‘Pitkin’s History’, pp. 42 and 47.

came. The population of New England increased rapidly ; and whilst the hierarchy of rank despotically classed the inhabitants of the mother-country, the colony continued to present the novel spectacle of a community homogeneous in all its parts. A democracy, more perfect than any which antiquity had dreamt of, started in full size and panoply from the midst of an ancient feudal society.

The English Government was not dissatisfied with an emigration which removed the elements of fresh discord and of further revolutions. On the contrary, everything was done to encourage it, and little attention was paid to the destiny of those who sought a shelter from the rigour of their country's laws on the soil of America. It seemed as if New England was a region given up to the dreams of fancy, and the unrestrained experiments of innovators.

The English colonies (and this is one of the main causes of their prosperity,) have always enjoyed more internal freedom and more political independence than the colonies of other nations ; but this principle of liberty was nowhere more extensively applied than in the States of New England.

It was generally allowed at that period that the territories of the New World belonged to that European nation which had been the first to discover them. Nearly the whole coast of North America thus became a British possession toward the end of the sixteenth century. The means used by the English Government to people these new domains

were of several kinds; the King sometimes appointed a governor of his own choice, who ruled a portion of the New World in the name and under the immediate orders of the Crown¹; this is the colonial system adopted by the other countries of Europe. Sometimes grants of certain tracts were made by the Crown to an individual or to a company², in which case all the civil and political power fell into the hands of one or more persons, who, under the inspection and controul of the Crown, sold the lands and governed the inhabitants. Lastly, a third system consisted in allowing a certain number of emigrants to constitute a political society under the protection of the mother-country, and to govern themselves in whatever was not contrary to her laws. This mode of colonization, so remarkably favourable to liberty, was only adopted in New England³.

¹ This was the case in the State of New York.

² Maryland, the Carolinas, Pennsylvania, and New Jersey were in this situation. See Pitkin's History, vol. i. p. 11—31.

³ See the work entitled '*Historical Collection of State Papers and other authentic Documents intended as materials for an History of the United States of America, by Ebenezer Hasard. Philadelphia, 1792,*' for a great number of documents relating to the commencement of the colonies, which are valuable from their contents and their authenticity: amongst them are the various charters granted by the King of England, and the first acts of the local governments.

See also the analysis of all these charters given by Mr. Story, Judge of the Supreme Court of the United States, in the Introduction to his Commentary on the Constitution of the United States. It results from these documents that the principles of representative government and the external forms of political liberty were introduced into all the colonies at their origin. These principles were

In 1628¹ a charter of this kind was granted by Charles I. to the emigrants who went to form the colony of Massachusetts. But, in general, charters were not given to the colonies of New England till they had acquired a certain existence. Plymouth, Providence, New Haven, the State of Connecticut, and that of Rhode Island² were founded without the co-operation and almost without the knowledge of the mother-country. The new settlers did not derive their incorporation from the head of the empire, although they did not deny its supremacy; they constituted a society of their own accord, and it was not till thirty or forty years afterwards, under Charles II., that their existence was legally recognised by a royal charter.

This frequently renders it difficult to detect the link which connected the emigrants with the land of their forefathers, in studying the earliest historical and legislative records of New England. They perpetually exercised the rights of sovereignty; they named their magistrates, concluded peace or declared war, made police regulations, and enacted laws as if their allegiance was due only to God³. Nothing can be more fully acted upon in the North than in the South, but they existed everywhere.

¹ See Pitkin's History, p. 35. See the *History of the Colony of Massachusetts Bay*, by Hutchinson, vol. i. p. 9.

² See Pitkin's History, pp. 42. 47.

³ The inhabitants of Massachusetts had deviated from the forms which are preserved in the criminal and civil procedure of England; in 1650 the decrees of justice were not yet headed by the royal style. See Hutchinson, vol. i. p. 452.

more curious, and at the same time more instructive, than the legislation of that period; it is there that the solution of the great social problem which the United States now present to the world is to be found.

Amongst these documents we shall notice, as especially characteristic, the Code of laws promulgated by the little State of Connecticut in 1650¹.

The legislators of Connecticut² begin with the penal laws, and, strange to say, they borrow their provisions from the text of Holy Writ.

“Whosoever shall worship any other God than the Lord,” says the preamble of the Code, “shall surely be put to death.” This is followed by ten or twelve enactments of the same kind, copied verbatim from the books of Exodus, Leviticus, and Deuteronomy. Blasphemy, sorcery, adultery³, and rape were punished with death; an outrage offered by a son to his parents was to be expiated by the same penalty. The legislation of a rude and half-

¹ Code of 1650, p. 28. Hartford, 1830.

² See also in Hutchinson's, History, vol. i. pp. 435, 456, the analysis of the penal code adopted in 1648 by the colony of Massachusetts: this code is drawn up on the same principles as that of Connecticut.

³ Adultery was also punished with death by the law of Massachusetts; and Hutchinson, vol. i. p. 441, says that several persons actually suffered for this crime. He quotes a curious anecdote on this subject, which occurred in the year 1663. A married woman had had criminal intercourse with a young man; her husband died, and she married the lover. Several years had elapsed, when the public began to suspect the previous intercourse of this couple: they were thrown into prison, put upon trial, and very narrowly escaped capital punishment.

civilized people was thus transferred to an enlightened and moral community. The consequence was that the punishment of death was never more frequently prescribed by the statute, and never more rarely enforced towards the guilty.

The chief care of the legislators, in this body of penal laws, was the maintenance of orderly conduct and good morals in the community: they constantly invaded the domain of conscience, and there was scarcely a sin which they did not subject to magisterial censure. The reader is aware of the rigour with which these laws punished rape and adultery; intercourse between unmarried persons was likewise severely repressed. The judge was empowered to inflict a pecuniary penalty, a whipping, or marriage¹, on the misdemeanants; and if the records of the old courts of New Haven may be believed, prosecutions of this kind were not unfrequent. We find a sentence, bearing date the 1st of May 1660, inflicting a fine and a reprimand on a young woman who was accused of using improper language, and of allowing herself to be kissed². The code of 1650 abounds in preventive measures. It punishes idles-

¹ Code of 1650, p. 48. It seems sometimes to have happened that the judges superadded these punishments to each other, as is seen in a sentence pronounced in 1643 (p. 114, *New Haven Antiquities*), by which Margaret Bedford, convicted of loose conduct, was condemned to be whipt, and afterwards to marry Nicolas Jemmings her accomplice.

² *New Haven Antiquities*, p. 104. See also Hutchinson's History for several causes equally extraordinary.

ness and drunkenness with severity¹. Innkeepers are forbidden to furnish more than a certain quantity of liquor to each consumer; and simple lying, whenever it may be injurious², is checked by a fine or a flogging. In other places, the legislator, entirely forgetting the great principles of religious toleration which he had himself upheld in Europe, renders attendance on divine service compulsory³, and goes so far as to visit with severe punishment⁴, and even with death, the Christians who chose to worship God according to a ritual differing from his own⁵. Sometimes indeed the zeal of his enactments induces him to descend to the most frivolous particulars: thus a law is to be found in the same Code which prohibits the use of tobacco⁶.

¹ Code of 1650, pp. 50. 57.

² *Ibid.*, p. 64.

³ *Ibid.*, p. 44.

⁴ This was not peculiar to Connecticut. See, for instance, the law which, on the 13th of September 1644, banished the Anabaptists from the State of Massachusetts. (Historical Collection of State Papers, vol. i. p. 538.) See also the law against the Quakers, passed on the 14th of October 1656. "Whereas," says the preamble, "an accursed race of heretics called Quakers has sprung up;" &c. The clauses of the statute inflict a heavy fine on all captains of ships who should import Quakers into the country. The Quakers who may be found there shall be whipt and imprisoned with hard labour. Those members of the sect who should defend their opinions shall be first fined, then imprisoned, and finally driven out of the province.—Historical Collection of State Papers, vol. i. p. 630.

⁵ By the penal law of Massachusetts, any Catholic priest who should set foot in the colony after having been once driven out of it was liable to capital punishment.

⁶ Code of 1650, p. 96.

It must not be forgotten that these fantastical and vexatious laws were not imposed by authority, but that they were freely voted by all the persons interested, and that the manners of the community were even more austere and more puritanical than the laws. In 1649 a solemn association was formed in Boston to check the worldly luxury of long hair¹.

These errors are no doubt discreditable to the human reason; they attest the inferiority of our nature, which is incapable of laying firm hold upon what is true and just, and is often reduced to the alternative of two excesses. In strict connexion with this penal legislation, which bears such striking marks of a narrow sectarian spirit, and of those religious passions which had been warmed by persecution and were still fermenting among the people, a body of political laws is to be found, which, though written two hundred years ago, is still ahead of the liberties of our age.

The general principles which are the groundwork of modern constitutions,—principles which were imperfectly known in Europe, and not completely triumphant even in Great Britain, in the seventeenth century,—were all recognised and determined by the laws of New England: the intervention of the people in public affairs, the free voting of taxes, the responsibility of authorities, personal liberty, and trial by jury, were all positively established without discussion.

¹ New England's Memorial, p. 316. See Appendix, E.

From these fruitful principles consequences have been derived and applications have been made such as no nation in Europe has yet ventured to attempt.

In Connecticut the electoral body consisted, from its origin, of the whole number of citizens; and this is readily to be understood¹, when we recollect that this people enjoyed an almost perfect equality of fortune, and a still greater uniformity of capacity². In Connecticut, at this period, all the executive functionaries were elected, including the Governor of the State³. The citizens above the age of sixteen were obliged to bear arms; they formed a national militia, which appointed its own officers, and was to hold itself at all times in readiness to march for the defence of the country⁴.

In the laws of Connecticut, as well as in all those of New England, we find the germ and gradual development of that township independence which is the life and mainspring of American liberty at the present day. The political existence of the majority of the nations of Europe commenced in the superior ranks of society, and was gradually and always imperfectly communicated to the different members of the social body. In America,

¹ Constitution of 1638, p. 17.

² In 1641 the General Assembly of Rhode Island unanimously declared that the government of the State was a democracy, and that the power was vested in the body of free citizens, who alone had the right to make the laws and to watch their execution. Code of 1650, p. 70.

Pitkin's History, p. 47.

⁴ Constitution of 1638, p. 12.

on the other hand, it may be said that the township was organized before the county, the county before the State, the State before the Union.

In New England, townships were completely and definitively constituted as early as 1650. The independence of the township was the nucleus round which the local interests, passions, rights, and duties collected and clung. It gave scope to the activity of a real political life, most thoroughly democratic and republican. The colonies still recognised the supremacy of the mother-country ; monarchy was still the law of the State ; but the republic was already established in every township.

The towns named their own magistrates of every kind, rated themselves, and levied their own taxes'. In the townships of New England the law of representation was not adopted, but the affairs of the community were discussed, as at Athens, in the market-place, by a general assembly of the citizens.

In studying the laws which were promulgated at this first æra of the American republics, it is impossible not to be struck by the remarkable acquaintance with the science of government, and the advanced theory of legislation which they display. The ideas there formed of the duties of society towards its members, are evidently much loftier and more comprehensive than those of the European legislators at that time : obligations were there imposed which were elsewhere slighted. In the States

of New England, from the first, the condition of the poor was provided for¹; strict measures were taken for the maintenance of roads, and surveyors were appointed to attend to them²; registers were established in every parish, in which the results of public deliberations, and the births, deaths, and marriages of the citizens were entered³; clerks were directed to keep these registers⁴; officers were charged with the administration of vacant inheritances, and with the arbitration of litigated landmarks; and many others were created whose chief functions were the maintenance of public order in the community⁵. The law enters into a thousand useful provisions for a number of social wants which are at present very inadequately felt in France.

But it is by the attention it pays to Public Education that the original character of American civilization is at once placed in the clearest light. "It being," says the law, "one chief project of Satan to keep men from the knowledge of the Scripture by persuading from the use of tongues, to the end that learning may not be buried in the graves of our forefathers, in church and commonwealth, the Lord assisting our endeavours,"⁶ Here follow clauses establishing schools in every township, and obliging the inhabitants, under pain of heavy fines, to support them. Schools of a

¹ Code of 1650, p. 78.

² *Ibid.*, p. 49.

³ See Hutchinson's History, vol. i. p. 455.

⁴ Code of 1650, p. 86. ⁵ *Ibid.*, p. 40. ⁶ *Ibid.*, p. 90.

superior kind were founded in the same manner in the more populous districts. The municipal authorities were bound to enforce the sending of children to school by their parents ; they were empowered to inflict fines upon all who refused compliance ; and in cases of continued resistance society assumed the place of the parent, took possession of the child, and deprived the father of those natural rights which he used to so bad a purpose. The reader will undoubtedly have remarked the preamble of these enactments : in America, religion is the road to knowledge, and the observance of the Divine laws leads man to civil freedom.

If, after having cast a rapid glance over the state of American society in 1650, we turn to the condition of Europe, and more especially to that of the Continent, at the same period, we cannot fail to be struck with astonishment. On the continent of Europe, at the beginning of the seventeenth century, absolute monarchy had everywhere triumphed over the ruins of the oligarchical and feudal liberties of the Middle Ages. Never were the notions of right more completely confounded than in the midst of the splendour and literature of Europe ; never was there less political activity among the people ; never were the principles of true freedom less widely circulated : and at that very time, those principles, which were scorned or unknown by the nations of Europe, were proclaimed in the deserts of the New World, and were accepted as the future creed of a

great people. The boldest theories of the human reason were put into practice by a community so humble, that not a statesman condescended to attend to it; and a legislation without a precedent was produced offhand by the imagination of the citizens. In the bosom of this obscure democracy, which had as yet brought forth neither generals, nor philosophers, nor authors, a man might stand up in the face of a free people and pronounce amidst general acclamations the following fine definition of liberty¹.

“Nor would I have you to mistake in the point of your own liberty. There is a liberty of corrupt nature, which is affected both by men and beasts to do what they list; and this liberty is inconsistent with authority, impatient of all restraint; by this liberty ‘*sumus omnes deteriores*’: ’t is the grand enemy of truth and peace, and all the ordinances of God are bent against it. But there is a civil, a moral, a federal liberty which is the proper end and object of authority; it is a liberty for that only which is just and good: for this liberty you are to stand with the hazard of your very lives, and whatsoever crosses it, is not authority, but a disorder thereof. This liberty is maintained in a way of subjection to authority; and the authority

¹ Mather’s *Magnalia Christi Americana*, vol. ii. p. 13. This speech was made by Winthrop; he was accused of having committed arbitrary actions during his magistracy, but after having made the speech of which the above is a fragment, he was acquitted by acclamation, and from that time forwards he was always re-elected governor of the State. See Marshall, vol. i. p. 166.

set over you will, in all administrations for your good, be quietly submitted unto by all but such as have a disposition to shake off the yoke and lose their true liberty, by their murmuring at the honour and power of authority.”

“The remarks I have made will suffice to display the character of Anglo-American civilization in its true light. It is the result (and this should be constantly present to the mind) of two distinct elements, which in other places have been in frequent hostility, but which in America have been admirably incorporated and combined with one another. I allude to the spirit of Religion, and the spirit of Liberty.

The settlers of New England were at the same time ardent sectarians and daring innovators. Narrow as the limits of some of their religious opinions were, they were entirely free from political prejudices.

Hence arose two tendencies, distinct but not opposite, which are constantly discernible in the manners as well as in the laws of the country.

It might be imagined that men who sacrificed their friends, their family, and their native land to a religious conviction, were absorbed in the pursuit of the intellectual advantages which they purchased at so dear a rate. The energy, however, with which they strove for the acquirement of wealth, moral enjoyment, and the comforts as well as liberties of the world, is scarcely inferior to that with which they devoted themselves to Heaven.

Political principles, and all human laws and in-

stitutions were moulded and altered at their pleasure ; the barriers of the society in which they were born were broken down before them ; the old principles which had governed the world for ages were no more, a path without a term, and a field without an horizon were opened to the exploring and ardent curiosity of man : but at the limits of the political world he checks his researches, he discreetly lays aside the use of his most formidable faculties, he no longer consents to doubt or to innovate, but carefully abstaining from raising the curtain of the sanctuary, he yields with submissive respect to truths which he will not discuss. . .

Thus in the moral world, everything is classed, adapted, decided, and foreseen ; in the political world everything is agitated, uncertain, and disputed : in the one is a passive, though a voluntary, obedience : in the other an independence, scornful of experience, and jealous of authority.

These two tendencies, apparently so discrepant, are far from conflicting ; they advance together, and mutually support each other. ..

Religion perceives that civil liberty affords a noble exercise to the faculties of man, and that the political world is a field prepared by the Creator for the efforts of the intelligence. Contented with the freedom and the power which it enjoys in its own sphere, and with the place which it occupies, the empire of religion is never more surely established than when it reigns in the hearts of men unsupported by aught beside its native strength.

Religion is no less the companion of liberty in all its battles and its triumphs ; the cradle of its infancy, and the divine source of its claims. The safeguard of morality is religion, and morality is the best security of law as well as the surest pledge of freedom !

REASONS OF CERTAIN ANOMALIES WHICH THE LAWS AND CUSTOMS OF THE ANGLO-AMERICANS PRESENT.

Remains of aristocratic institutions in the midst of a complete democracy.—Why?—Distinction carefully to be drawn between what is of Puritanical and what is of English origin.

THE reader is cautioned not to draw too general or too absolute an inference from what has been said. The social condition, the religion, and the manners of the first emigrants undoubtedly exercised an immense influence on the destiny of their new country. Nevertheless it was not in their power to found a state of things originating solely in themselves : no man can entirely shake off the influence of the past ; and the settlers, intentionally or involuntarily, mingled habits and notions derived from their education and from the traditions of their country with those habits and notions which were exclusively their own. To form a judgement on the Anglo-Americans of the present day, it is therefore necessary carefully to distinguish what is of Puritanical from what is of English origin.

Laws and customs are frequently to be met with in

¹ See Appendix, F.

the United States which contrast strongly with all that surrounds them. These laws seem to be drawn up in a spirit contrary to the prevailing tenor of the American legislation; and these customs are no less opposed to the general tone of society. If the English colonies had been founded in an age of darkness, or if their origin was already lost in the lapse of years, the problem would be insoluble.

I shall quote a single example to illustrate what I advance.

The civil and criminal procedure of the Americans has only two means of action,—committal or bail. The first measure taken by the magistrate is to exact security from the defendant, or, in case of refusal, to incarcerate him: the ground of the accusation and the importance of the charges against him are then discussed.

It is evident that a legislation of this kind is hostile to the poor man, and favourable only to the rich. The poor man has not always a security to produce, even in a civil cause; and if he is obliged to wait for justice in prison, he is speedily reduced to distress. The wealthy individual, on the contrary, always escapes imprisonment in civil causes; nay, more, he may readily elude the punishment which awaits him for a delinquency by breaking his bail. So that all the penalties of the law are, for him, reducible to fines¹. Nothing can be more aristo-

¹ Crimes no doubt exist for which bail is inadmissible, but they are few in number.

cratic than this system of legislation. Yet in America it is the poor who make the law, and they usually reserve the greatest social advantages to themselves. The explanation of the phenomenon is to be found in England; the laws of which I speak are English', and the Americans have retained them, however repugnant they may be to the tenor of their legislation and the mass of their ideas.

Next to its habits, the thing which a nation is least apt to change is its civil legislation. Civil laws are only familiarly known to legal men, whose direct interest it is to maintain them as they are, whether good or bad, simply because they themselves are conversant with them. The body of the nation is scarcely acquainted with them: it merely perceives their action in particular cases; but it has some difficulty in seizing their tendency, and obeys them without reflection.

I have quoted one instance where it would have been easy to adduce a great number of others.

The surface of American society is, if I may use the expression, covered with a layer of democracy, from beneath which the old aristocratic colours sometimes peep.

See Blackstone; and Delolme, book I. chap. x.

CHAPTER III

SOCIAL CONDITION OF THE ANGLO-AMERICANS.

A SOCIAL condition is commonly the result of circumstances, sometimes of laws, oftener still of these two causes united, but wherever it exists, it may justly be considered as the source of almost all the laws, the usages, and the ideas which regulate the conduct of nations : whatever it does not produce, it modifies. •

It is therefore necessary, if we would become acquainted with the legislation and the manners of a nation, to begin by the study of its social condition.

THE STRIKING CHARACTERISTIC OF THE SOCIAL CONDITION OF THE ANGLO-AMERICANS IS ITS ESSENTIAL DEMOCRACY.

The first emigrants of New England.—Their equality.—Aristocratic laws introduced in the South.—Period of the Revolution.—Change in the law of descent.—Effects produced by this change.—Democracy carried to its utmost limits in the new States of the West.—Equality of education.

MANY important observations suggest themselves upon the social condition of the Anglo-Americans ; but there is one which takes precedence of

all the rest. The social condition of the Americans is eminently democratic; this was its character at the foundation of the colonies, and is still more strongly marked at the present day.

I have stated in the preceding chapter that great equality existed among the emigrants who settled on the shores of New England. The germ of aristocracy was never planted in that part of the Union. The only influence which obtained there was that of intellect; the people were used to reverence certain names as the emblems of knowledge and virtue. Some of their fellow-citizens acquired a power over the rest which might truly have been called aristocratic, if it had been capable of invariable transmission from father to son.

This was the state of things to the east of the Hudson: to the south-west of that river, and in the direction of the Floridas, the case was different. In most of the States situated to the south-west of the Hudson some great English proprietors had settled, who had imported with them aristocratic principles and the English law of descent. I have explained the reasons why it was impossible ever to establish a powerful aristocracy in America; these reasons existed with less force to the south-west of the Hudson. In the South, one man, aided by slaves, could cultivate a great extent of country: it was therefore common to see rich landed proprietors. But their influence was not altogether aristocratic as that term is understood in Europe, since

they possessed no privileges ; and the cultivation of their estates being carried on by slaves, they had no tenants depending on them, and consequently no patronage. Still, the great proprietors south of the Hudson constituted a superior class, having ideas and tastes of its own, and forming the centre of political action. This kind of aristocracy sympathized with the body of the people, whose passions and interests it easily embraced ; but it was too weak and too short-lived to excite either love or hatred for itself. This was the class which headed the insurrection in the South, and furnished the best leaders of the American revolution.

At the period of which we are now speaking society was shaken to its centre : the people, in whose name the struggle had taken place, conceived the desire of exercising the authority which it had acquired ; its democratic tendencies were awakened ; and having thrown off the yoke of the mother-country, it aspired to independence of every kind. The influence of individuals gradually ceased to be felt, and custom and law united together to produce the same result.

But the law of descent was the last step to equality. I am surprised that ancient and modern jurists have not attributed to this law a greater influence on human affairs¹. It is true that these laws

¹ I understand by the law of descent all those laws whose principal object it is to regulate the distribution of property after the death of its owner. The law of entail is of this number : it cer-

belong to civil affairs ; but they ought nevertheless to be placed at the head of all political institutions ; for, whilst political laws are only the symbol of a nation's condition, they exercise an incredible influence upon its social state. They have, moreover, a sure and uniform manner of operating upon society, affecting, as it were, generations yet unborn.

Through their means man acquires a kind of preternatural power over the future lot of his fellow-creatures. When the legislator has once regulated the law of inheritance, he may rest from his labour. The machine once put in motion will go on for ages, and advance, as if self-guided, towards a given point. When framed in a particular manner, this law unites, draws together, and vests property and power in a few hands : its tendency is clearly aristocratic. On opposite principles its action is still more rapid ; it divides, distributes, and disperses both property and power. Alarmed by the rapidity of its progress, those who despair of arresting its motion endeavour to obstruct it by difficulties and impediments ; they vainly seek to counteract its effect by contrary efforts : but it gradually reduces or destroys every obstacle, until by

tainly prevents the owner from disposing of his possessions before his death ; but this is solely with the view of preserving them entire for the heir. The principal object, therefore, of the law of entail is to regulate the descent of property after the death of its owner : its other provisions are merely means to this end.

its incessant activity the bulwarks of the influence of wealth are ground down to the fine and shifting sand which is the basis of democracy. When the law of inheritance permits, still more when it decrees, the equal division of a father's property amongst all his children; its effects are of two kinds : it is important to distinguish them from each other, although they tend to the same end.

In virtue of the law of partible inheritance, the death of every proprietor brings about a kind of revolution in property : not only do his possessions change hands, but their very nature is altered ; since they are parcelled into shares, which become smaller and smaller at each division. This is the direct and, as it were, the physical effect of the law. It follows, then, that in countries where equality of inheritance is established by law, property, and especially landed property, must have a tendency to perpetual diminution. The effects, however, of such legislation would only be perceptible after a lapse of time, if the law was abandoned to its own working ; for supposing a family to consist of two children, (and in a country peopled as France is the average number is not above three,) these children, sharing amongst them the fortune of both parents, would not be poorer than their father or mother.

But the law of equal division exercises its influence not merely upon the property itself, but it affects the minds of the heirs, and brings their passions into play. These indirect consequences tend

powerfully to the destruction of large fortunes, and especially of large domains.

Among nations whose law of descent is founded upon the right of primogeniture, landed estates often pass from generation to generation without undergoing division. The consequence of which is that family feeling is to a certain degree incorporated with the estate. The family represents the estate; the estate the family; whose name, together with its origin, its glory, its power, and its virtues, is thus perpetuated in an imperishable memorial of the past, and a sure pledge of the future.

When the equal partition of property is established by law, the intimate connexion is destroyed between family-feeling and the preservation of the paternal estate; the property ceases to represent the family; for, as it must inevitably be divided after one or two generations, it has evidently a constant tendency to diminish, and must in the end be completely dispersed. The sons of the great landed proprietor, if they are few in number, or if fortune befriends them, may indeed entertain the hope of being as wealthy as their father, but not that of possessing the same property as he did; their riches must necessarily be composed of elements different from his.

Now, from the moment that you divest the land-owner of that interest in the preservation of his estate which he derives from association, from tradition, and from family pride, you may be certain

that sooner or later he will dispose of it ; for there is a strong pecuniary interest in favour of selling, as floating capital produces higher interest than real property, and is more readily available to gratify the passions of the moment.

Great landed estates which have once been divided never come together again ; for the small proprietor draws from his land a better revenue in proportion, than the large owner does from his ; and of course he sells it at a higher rate¹. The calculations of gain, therefore, which decided the rich man to sell his domain, will still more powerfully influence him against buying small estates to unite them into a large one.

What is called family-pride is often founded upon an illusion of self-love. A man wishes to perpetuate and immortalize himself, as it were, in his great grand-children. Where the *esprit de famille* ceases to act, individual selfishness comes into play. When the idea of family becomes vague, indeterminate, and uncertain, a man thinks of his present convenience ; he provides for the establishment of the succeeding generation, and no more.

Either a man gives up the idea of perpetuating his family, or at any rate he seeks to accomplish it by other means than that of a landed estate.

Thus not only does the law of partible inherit-

¹ I do not mean to say that the small proprietor cultivates his land better, but he cultivates it with more ardour and care ; so that he makes up by his labour for his want of skill.

ance render it difficult for families to preserve their ancestral domains entire, but it deprives them of the inclination to attempt it, and compels them in some measure to cooperate with the law in their own extinction.

The law of equal distribution proceeds by two methods: by acting upon things, it acts upon persons; by influencing persons, it affects things. By these means the law succeeds in striking at the root of landed property, and dispersing rapidly both families and fortunes¹.

Most certainly it is not for us, Frenchmen of the nineteenth century, who daily witness the political and social changes which the law of partition is bringing to pass, to question its influence. It is perpetually conspicuous in our country, overthrowing the walls of our dwellings and removing the

¹ Land being the most stable kind of property, we find, from time to time, rich individuals who are disposed to make great sacrifices in order to obtain it, and who willingly forfeit a considerable part of their income to make sure of the rest. But these are accidental cases. The preference for landed property is no longer found habitually in any class but among the poor. The small landowner, who has less information, less imagination, and fewer passions than the great one, is generally occupied with the desire of increasing his estate; and it often happens that by inheritance, by marriage, or by the chances of trade, he is gradually furnished with the means. Thus, to balance the tendency which leads men to divide their estates, there exists another, which incites them to add to them. This tendency, which is sufficient to prevent estates from being divided *ad infinitum*, is not strong enough to create great territorial possessions, certainly not to keep them up in the same family.

landmarks of our fields. But although it has produced great effects in France, much still remains for it to do. Our recollections, opinions; and habits present powerful obstacles to its progress.

In the United States it has nearly completed its work of destruction, and there we can best study its results. The English laws concerning the transmission of property were abolished in almost all the States at the time of the Revolution. The law of entail was so modified as not to interrupt the free circulation of property'. The first generation having passed away, estates began to be parcelled out; and the change became more and more rapid with the progress of time. At this moment, after a lapse of little more than sixty years, the aspect of society is totally altered; the families of the great landed proprietors are almost all commingled with the general mass. In the State of New York, which formerly contained many of these, there are but two who still keep their heads above the stream; and they must shortly disappear. The sons of these opulent citizens are become merchants, lawyers, or physicians. Most of them have lapsed into obscurity. The last trace of hereditary rank and distinctions is destroyed.—the law of partition has reduced all to one level.

I do not mean that there is any deficiency of wealthy individuals in the United States; I know of no country, indeed, where the love of money ha

taken stronger hold on the affections of men, and where a profounder contempt is expressed for the theory of the permanent equality of property. But wealth circulates with inconceivable rapidity, and experience shows that it is rare to find two succeeding generations in the full enjoyment of it. •

This picture, which may perhaps be thought to be overcharged, still gives a very imperfect idea of what is taking place in the new States of the West and South-west. At the end of the last century a few bold adventurers began to penetrate into the valleys of the Mississippi: and the mass of the population very soon began to move in that direction: communities unheard of till then were seen to emerge from the wilds: States, whose names were not in existence a few years before, claimed their place in the American Union: and in the Western settlements we may behold democracy arrived at its utmost extreme. In these States, founded offhand and as it were by chance, the inhabitants are but of yesterday. Scarcely known to one another, the nearest neighbours are ignorant of each other's history. In this part of the American continent, therefore, the population has not experienced the influence of great names and great wealth, nor even that of the natural aristocracy of knowledge and virtue. • None are there to wield that respectable power which men willingly grant to the remembrance of a life spent in doing good before their eyes. The new States of the West are

already inhabited ; but society has no existence among them.

It is not only the fortunes of men which are equal in America ; even their acquirements partake in some degree of the same uniformity. I do not believe that there is a country in the world where, in proportion to the population, there are so few instructed, and at the same time so few learned individuals. Primary instruction is within the reach of everybody ; superior instruction is scarcely to be obtained by any. This is not surprising ; it is in fact the necessary consequence of what we have advanced above. Almost all the Americans are in easy circumstances, and can therefore obtain the first elements of human knowledge.

In America there are comparatively few who are rich enough to live without a profession. Every profession requires an apprenticeship, which limits the time of instruction to the early years of life. At fifteen they enter upon their calling, and thus their education ends at the age when ours begins. Whatever is done afterwards, is with a view to some special and lucrative object ; a science is taken up as a matter of business, and the only branch of it which is attended to is such as admits of an immediate practical application.

In America most of the rich men were formerly poor : most of those who now enjoy leisure were absorbed in business during their youth ; the consequence of which is, that when they might have had

a taste for study they had no time for it, and when the time is at their disposal they have no longer the inclination.

There is no class, then, in America in which the taste for intellectual pleasures is transmitted with hereditary fortune and leisure, and by which the labours of the intellect are held in honour. Accordingly there is an equal want of the desire and the power of application to these objects.

A middling standard is fixed in America for human knowledge. All approach as near to it as they can ; some as they rise, others as they descend. Of course, an immense multitude of persons are to be found who entertain the same number of ideas on religion, history, science, political economy, legislation, and government. The gifts of intellect proceed directly from God, and man cannot prevent their unequal distribution. But in consequence of the state of things which we have here represented, it happens, that although the capacities of men are widely different, as the Creator has doubtless intended they should be, they are submitted to the same method of treatment.

In America the aristocratic element has always been feeble from its birth ; and if at the present day it is not actually destroyed, it is at any rate so completely disabled that we can scarcely assign to it any degree of influence in the course of affairs.

The democratic principle, on the contrary, has gained so much strength by time, by events and

by legislation, as to have become not only predominant but all-powerful. There is no family or corporate authority, and it is rare to find even the influence of individual character enjoy any durability.

America, then, exhibits in her social state a most extraordinary phænomenon. Men are there seen on a greater equality in point of fortune and intellect, or, in other words, more equal in their strength, than in any other country of the world, or, in any age of which history has preserved the remembrance.

POLITICAL CONSEQUENCES OF THE SOCIAL CONDITION OF THE ANGLO-AMERICANS.

THE political consequences of such a social condition as this are easily deducible.

It is impossible to believe that equality will not eventually find its way into the political world as it does everywhere else. To conceive of men remaining for ever unequal upon one single point, yet equal on all others, is impossible; they must come in the end to be equal upon all.

Now I know of only two methods of establishing equality in the political world; every citizen must be put in possession of his rights, or rights must be granted to no one. For nations which are arrived at the same stage of social existence as the Anglo-Americans, it is therefore very difficult to discover

a medium between the sovereignty of all and the absolute power of one man : and it would be vain to deny that the social condition which I have been describing is equally liable to each of these consequences.

There is, in fact, a manly and lawful passion for equality which excites men to wish all to be powerful and honoured. This passion tends to elevate the humble to the rank of the great ; but there exists also in the human heart a depraved taste for equality, which impels the weak to attempt to lower the powerful to their own level, and reduces men to prefer equality in slavery to inequality with freedom. Not that those nations whose social condition is democratic naturally despise liberty ; on the contrary, they have an instinctive love of it. But liberty is not the chief and constant object of their desires ; equality is their idol : they make rapid and sudden efforts to obtain liberty ; and if they miss their aim, resign themselves to their disappointment ; but nothing can satisfy them except equality, and rather than lose it they resolve to perish.

On the other hand, in a state where the citizens are nearly on an equality, it becomes difficult for them to preserve their independence against the aggressions of power. No one among them being strong enough to engage singly in the struggle with advantage, nothing but a general combination can protect their liberty : and such a union is not always to be found.

. From the same social position, then, nations may derive one or the other of two great political results ; these results are extremely different from each other, but they may both proceed from the same cause.

The Anglo-Americans are the first who, having been exposed to this formidable alternative, have been happy enough to escape the dominion of absolute power. They have been allowed by their circumstances, their origin, their intelligence, and especially by their moral feeling, to establish and maintain the sovereignty of the people.

CHAPTER IV.

THE PRINCIPLE OF THE SOVEREIGNTY OF THE PEOPLE
IN AMERICA.

It predominates over the whole of society in America.—Application made of this principle by the Americans even before their Revolution.—Development given to it by that Revolution.—Gradual and irresistible extension of the elective qualification.

WHENEVER the political laws of the United States are to be discussed, it is with the doctrine of the sovereignty of the people that we must begin.

The principle of the sovereignty of the people, which is to be found, more or less, at the bottom of almost all human institutions, generally remains concealed from view. It is obeyed without being recognised, or if for a moment it be brought to light, it is hastily cast back into the gloom of the sanctuary.

‘The will of the nation’ is one of those expressions which have been most profusely abused by the wily and the despotic of every age. To the eyes of some it has been represented by the venal suffrages of a few of the satellites of power; to others, by the votes of a timid, or an interested minority; and some have even discovered it in the silence of a people, on the supposition that the fact of submission established the right of command.

In America, the principle of the sovereignty of the people is not either barren or concealed, as it is with some other nations ; it is recognised by the customs and proclaimed by the laws ; it spreads freely, and arrives without impediment at its most remote consequences. If there be a country in the world where the doctrine of the sovereignty of the people can be fairly appreciated, where it can be studied in its application to the affairs of society, and where its dangers and its advantages may be foreseen, that country is assuredly America.

I have already observed that, from their origin, the sovereignty of the people was the fundamental principle of the greater number of British colonies in America. It was far, however, from then exercising as much influence on the government of society as it now does. Two obstacles, the one external, the other internal, checked its invasive progress.

It could not ostensibly disclose itself in the laws of colonies which were still constrained to obey the mother-country : it was therefore obliged to spread secretly, and to gain ground in the provincial assemblies, and especially in the townships.

American society was not yet prepared to adopt it with all its consequences. The intelligence of New England, and the wealth of the country to the south of the Hudson, (as I have shown in the preceding chapter,) long exercised a sort of aristocratic influence, which tended to limit the exercise

of social authority within the hands of a few. The public functionaries were not universally elected, and the citizens were not all of them electors. The electoral franchise was everywhere placed within certain limits, and made dependent on a certain qualification, which was exceedingly low in the North and more considerable in the South.

The American revolution broke out, and the doctrine of the sovereignty of the people, which had been nurtured in the townships, took possession of the State: every class was enlisted in its cause; battles were fought, and victories obtained for it; until it became the law of laws.

A scarcely less rapid change was effected in the interior of society, where the law of descent completed the abolition of local influences.

At the very time when this consequence of the laws and of the revolution became apparent to every eye, victory was irrevocably pronounced in favour of the democratic cause. All power was, in fact, in its hands, and resistance was no longer possible. The higher orders submitted without a murmur and without a struggle to an evil which was thenceforth inevitable. The ordinary fate of falling powers awaited them; each of their several members followed his own interest; and as it was impossible to wring the power from the hands of a people which they did not detest sufficiently to brave, their only aim was to secure its good-will at any price. The most democratic laws were consequently voted by

the very men whose interests they impaired: and thus, although the higher classes did not excite the passions of the people against their order, they accelerated the triumph of the new state of things; so that, by a singular change, the democratic impulse was found to be most irresistible in the very States where the aristocracy had the firmest hold.

The State of Maryland, which had been founded by men of rank, was the first to proclaim universal suffrage¹, and to introduce the most democratic forms into the conduct of its government.

When a nation modifies the elective qualification, it may easily be foreseen that sooner or later that qualification will be entirely abolished. There is no more invariable rule in the history of society: the further electoral rights are extended, the more is felt the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength. The ambition of those who are below the appointed rate is irritated in exact proportion to the great number of those who are above it. The exception at last becomes the rule, concession follows concession; and no stop can be made short of universal suffrage.

At the present day the principle of the sovereignty of the people has acquired, in the United States, all the practical development which the

¹ See the amendments made to the Constitution of Maryland in 1801 and 1809.

imagination can conceive. It is unencumbered by those fictions which have been thrown over it in other countries, and it appears in every possible form according to the exigency of the occasion. Sometimes the laws are made by the people in a body, as at Athens ; and sometimes its representatives, chosen by universal suffrage, transact business in its name, and almost under its immediate control.

In some countries a power exists which, though it is in a degree foreign to the social body, directs it, and forces it to pursue a certain track. In others the ruling force is divided, being partly within and partly without the ranks of the people. But nothing of the kind is to be seen in the United States ; there society governs itself for itself. All power centres in its bosom ; and scarcely an individual is to be met with who would venture to conceive, or, still less, to express, the idea of seeking it elsewhere. The nation participates in the making of its laws by the choice of its legislators, and in the execution of them by the choice of the agents of the executive government ; it may almost be said to govern itself, so feeble and so restricted is the share left to the administration, so little do the authorities forget their popular origin and the power from which they emanate¹.

¹ See Appendix, H.

CHAPTER V.

NECESSITY OF EXAMINING THE CONDITION OF THE
STATES BEFORE THAT OF THE UNION AT LARGE.

IT is proposed to examine in the following chapter, what is the form of government established in America on the principle of the sovereignty of the people ; what are its resources, its hinderances, its advantages, and its dangers. The first difficulty which presents itself arises from the complex nature of the Constitution of the United States, which consists of two distinct social structures, connected, and, as it were, encased one within the other ; two governments, completely separate and almost independent, the one fulfilling the ordinary duties, and responding to the daily and indefinite calls of a community, the other circumscribed within certain limits, and only exercising an exceptional authority over the general interests of the country. In short, there are twenty-four small sovereign nations, whose agglomeration constitutes the body of the Union. To examine the Union before we have studied the States, would be to adopt a method filled with obstacles. The form of the Federal Government of the United States was the last which was adopted; and

it is in fact nothing more than a modification or a summary of those republican principles which were current in the whole community before it existed, and independently of its existence. Moreover, the Federal Government is, as I have just observed, the exception ; the Government of the States is the rule. The author who should attempt to exhibit the picture as a whole, before he had explained its details, would necessarily fall into obscurity and repetition.

The great political principles which govern American society at this day undoubtedly took their origin and their growth in the State. It is therefore necessary to become acquainted with the State in order to possess a clue to the remainder. The States which at present compose the American Union all present the same features as far as regards the external aspect of their institutions. Their political or administrative existence is centred in three foci of action, which may not inaptly be compared to the different nervous centres which convey motion to the human body. The township is the lowest in order, then the county, and lastly the State ; and I propose to devote the following chapter to the examination of these three divisions.

THE AMERICAN SYSTEM OF TOWNSHIPS AND MUNICIPAL BODIES¹

Why the Author begins the examination of the political institutions with the township.—Its existence in all nations.—Difficulty of establishing and preserving municipal independence.—Its importance.—Why the Author has selected the township system of New England as the main object of his inquiry.

It is not undesignedly that I begin this subject with the Township. The village or township is the only association which is so perfectly natural, that wherever a number of men are collected, it seems to constitute itself.

The town, or tithing, as the smallest division of

¹ [It is by this periphrasis that I attempt to render the French expressions '*Commune*' and '*Système Communal*'. I am not aware that any English word precisely corresponds to the general term of the original. In France every association of human dwellings forms a *commune*, and every commune is governed by a *Maire* and a *Conseil municipal*. In other words, the *municipium*, or municipal privilege, which belongs in England to chartered corporations alone, is alike extended to every commune into which the cantons and departments of France were divided at the Revolution. Thence the different application of the expression, which is general in one country and restricted in the other. In America, the counties of the Northern States are divided into townships, those of the Southern into parishes; besides which, municipal bodies, bearing the name of corporations, exist in the cities. I shall apply these several expressions to render the term *commune*. The word 'parish', now commonly used in England, belongs exclusively to the ecclesiastical division; it denotes the limits over which a *parson's* (*persona ecclesiæ* or perhaps *parochianus*) rights extend.—Translator's Note.]

a community, must necessarily exist in all nations, whatever their laws and customs may be: if man makes monarchies, and establishes republics, the first association of mankind seems constituted by the hand of God. But although the existence of the township is coeval with that of man, its liberties are not the less rarely respected and easily destroyed. A nation is always able to establish great political assemblies, because it habitually contains a certain number of individuals fitted by their talents, if not by their habits, for the direction of affairs. The township is, on the contrary, composed of coarser materials, which are less easily fashioned by the legislator. The difficulties which attend the consolidation of its independence rather augment than diminish with the increasing enlightenment of the people. A highly civilized community spurns the attempts of a local independence, is disgusted at its numerous blunders, and is apt to despair of success before the experiment is completed. Again, no immunities are so ill protected from the encroachments of the supreme power as those of municipal bodies in general: they are unable to struggle, single-handed, against a strong or an enterprising government, and they cannot defend their cause with success unless it be identified with the customs of the nation and supported by public opinion. Thus until the independence of townships is amalgamated with the manners of a people, it is easily destroyed: and it is only after a long existence in

the laws that it can be thus amalgamated. Municipal freedom eludes the exertions of man ; it is rarely created ; but it is, as it were, secretly and spontaneously engendered in the midst of a semi-barbarous state of society. The constant action of the laws and the national habits, peculiar circumstances, and above all time, may consolidate it ; but there is certainly no nation on the continent of Europe which has experienced its advantages. Nevertheless local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science ; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty. The transient passions, and the interests of an hour, or the chance of circumstances, may have created the external forms of independence ; but the despotic tendency which has been repelled will, sooner or later, inevitably reappear on the surface.

In order to explain to the reader the general principles on which the political organization of the counties and townships of the United States rests, I have thought it expedient to choose one of the States of New England as an example, to examine the mechanism of its constitution, and then to cast a general glance over the country.

The township and the county are not organized

in the same manner in every part of the Union ; it is however easy to perceive that the same principles have guided the formation of both of them throughout the Union. I am inclined to believe that these principles have been carried further in New England than elsewhere, and consequently that they offer greater facilities to the observations of a stranger.

The institutions of New England form a complete and regular whole : they have received the sanction of time, they have the support of the laws, and the still stronger support of the manners of the community, over which they exercise the most prodigious influence ; they consequently deserve our attention on every account.

LIMITS OF THE TOWNSHIP.

THE Township of New England is a division which stands between the *commune* and the *canton* of France, and which corresponds in general to the English tithing, or town. Its average population is from two to three thousand¹ ; so that, on the one hand, the interests of its inhabitants are not likely to conflict, and, on the other, men capable of conducting its affairs are always to be found among its citizens.

¹ In 1830 there were 305 townships in the State of Massachusetts, and 610,014 inhabitants ; which gives an average of about 2000 inhabitants to each township.

AUTHORITIES OF THE TOWNSHIP IN NEW ENGLAND.

The people the source of all power here as elsewhere.—Manages its own affairs.—No corporation.—The greater part of the authority vested in the hands of the Selectmen.—How the Selectmen act.—Town-meeting.—Enumeration of the public officers of the township.—Obligatory and remunerated functions.

In the township, as well as everywhere else, the people is the only source of power ; but in no stage of government does the body of citizens exercise a more immediate influence. In America, the people is a master whose exigencies demand obedience to the utmost limits of possibility.

In New England the majority acts by representatives in the conduct of the public business of the State ; but if such an arrangement be necessary in general affairs, in the townships, where the legislative and administrative action of the government is in more immediate contact with the subject, the system of representation is not adopted. There is no corporation ; but the body of electors, after having designated its magistrates, directs them in everything that exceeds the simple and ordinary executive business of the State¹.

¹ The same rules are not applicable to the great towns, which generally have a mayor, and a corporation divided into two bodies : this, however, is an exception which requires the sanction of a law.—See the Act of the 22nd February 1822, for appointing the authorities of the City of Boston. It frequently happens that small towns as well as cities are subject to a peculiar administration. In 1832, 104 townships in the State of New York were governed in this manner. *Williams's Register*.

This state of things is so contrary to our ideas, and so different from our customs, that it is necessary for me to adduce some examples to explain it thoroughly.

The public duties in the township are extremely numerous, and minutely divided, as we shall see further on ; but the larger proportion of administrative power is vested in the hands of a small number of individuals, called " the Selectmen'."

The general laws of the State impose a certain number of obligations on the selectmen, which they may fulfil without the authorization of the body they govern, but which they can only neglect on their own responsibility. The law of the State obliges them, for instance, to draw up the list of electors in their townships ; and if they omit this part of their functions, they are guilty of a misdemeanour. In all the affairs, however, which are determined by the town-meeting, the selectmen are the organs of the popular mandate, as in France the Maire executes the decree of the municipal council. They usually act upon their own responsibility, and merely put in practice principles which have been previ-

¹ Three selectmen are appointed in the small townships, and nine in the large ones.—See 'The Town Officer,' p. 186. See also the principal laws of the State of Massachusetts relative to the selectmen :

Act of the 20th February, 1786, vol. i. p. 219 ; 24th February, 1796, vol. i. p. 488 ; 7th March, 1801, vol. ii. p. 45 ; 16th June, 1795, vol. i. p. 475 ; 12th March, 1808, vol. ii. p. 186 ; 28th February, 1787, vol. i. p. 302 ; 22nd June, 1797, vol. i. p. 539.

ously recognised by the majority. But if any change is to be introduced in the existing state of things, or if they wish to undertake any new enterprise, they are obliged to refer to the source of their power. If, for instance, a school is to be established, the selectmen convoke the whole body of electors on a certain day at an appointed place; they explain the urgency of the case; they give their opinion on the means of satisfying it, on the probable expense, and the site which seems to be most favourable. The meeting is consulted on these several points; it adopts the principle, marks out the site, votes the rate, and confides the execution of its resolution to the selectmen.

The selectmen have alone the right of calling a town-meeting; but they may be requested to do so: if ten citizens are desirous of submitting a new project to the assent of the township, they may demand a general convocation of the inhabitants; the selectmen are obliged to comply, but they have only the right of presiding at the meeting¹.

The selectmen are elected every year in the month of April or of May. The town-meeting chooses at the same time a number of other municipal magistrates, who are entrusted with important administrative functions. The assessors rate the township; the collectors receive the rate. A constable is appointed to keep the peace, to watch the

¹ See laws of Massachusetts, vol. i. p. 130, Act of the 25th March, 1786.

streets, and to forward the execution of the laws ; the town-clerk records all the town votes, orders, grants, births, deaths, and marriages ; the treasurer keeps the funds ; the overseer of the poor performs the difficult task of superintending the action of the poor-laws ; committee-men are appointed to attend to the schools and to public instruction ; and the road-surveyors, who take care of the greater and lesser thoroughfares of the township, complete the list of the principal functionaries. They are however, still further subdivided ; and amongst the municipal officers are to be found parish commissioners, who audit the expenses of public worship ; different classes of inspectors, some of whom are to direct the citizens in case of fire ; tithing-men, listers, haywards, chimney-viewers, fence-viewers to maintain the bounds of property, timber-measurers, and sealers of weights and measures¹.

There are nineteen principal offices in a township. Every inhabitant is constrained, on pain of being fined, to undertake these different functions ; which, however, are almost all paid, in order that the poorer citizens may be able to give up their time without loss. In general the American system is not to grant a fixed salary to its functionaries. Every service has its price, and they are remunerated in proportion to what they have done.

¹ All these magistrates actually exist ; their different functions are all detailed in a book called, 'The Town Officer,' by Isaac Goodwin, Worcester, 1827 ; and in the Collection of the General Laws of Massachusetts, 3 vols., Boston, 1823.

EXISTENCE OF THE TOWNSHIP.

Every one the best judge of his own interest.—Corollary of the principle of the sovereignty of the people.—Application of these doctrines in the townships of America.—The township of New England is sovereign in all that concerns itself alone: subject to the State in all other matters.—Bond of the township and the State.—In France the Government lends its agents to the *Commune*.—In America the reverse occurs.

I HAVE already observed, that the principle of the sovereignty of the people governs the whole political system of the Anglo-Americans. Every page of this book will afford new instances of the same doctrine. In the nations by which the sovereignty of the people is recognised, every individual possesses an equal share of power, and participates alike in the government of the State. Every individual is therefore supposed to be as well informed, as virtuous, and as strong as any of his fellow-citizens. He obeys the government, not because he is inferior to the authorities which conduct it, or that he is less capable than his neighbour of governing himself, but because he acknowledges the utility of an association with his fellow-men, and because he knows that no such association can exist without a regulating force. If he be a subject in all that concerns the mutual relations of citizens, he is free and responsible to God alone for all that concerns himself. Hence arises the maxim that every one is the best and the sole judge of his own private interest, and that society has no right to control a

man's actions, unless they are prejudicial to the common weal, or unless the common weal demands his cooperation. This doctrine is universally admitted in the United States. I shall hereafter examine the general influence which it exercises on the ordinary actions of life: I am now speaking of the nature of municipal bodies."

The township, taken as a whole, and in relation to the government of the country, may be looked upon as an individual to whom the theory I have just alluded to is applied. Municipal independence is therefore a natural consequence of the principle of the sovereignty of the people in the United States: all the American republics recognise it more or less; but circumstances have peculiarly favoured its growth in New England.

In this part of the Union the impulsion of political activity was given in the townships; and it may almost be said that each of them originally formed an independent nation. When the kings of England asserted their supremacy, they were contented to assume the central power of the State. The townships of New England remained as they were before; and although they are now subject to the State, they were at first scarcely dependent upon it. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the State. The townships are only subordinate to the State in those

interests which I shall term *social*, as they are common to all the citizens. They are independent in all that concerns themselves; and amongst the inhabitants of New England I believe that not a man is to be found who would acknowledge that the State has any right to interfere in their local interests. The towns of New England buy and sell, prosecute or are indicted, augment or diminish their rates, without the slightest opposition on the part of the administrative authority of the State.

They are bound, however, to comply with the demands of the community. If the State is in need of money, a town can neither give nor withhold the supplies. If the State projects a road, the township cannot refuse to let it cross its territory; if a police regulation is made by the State, it must be enforced by the town. A uniform system of instruction is organized all over the country, and every town is bound to establish the schools which the law ordains. In speaking of the administration of the United States, I shall have occasion to point out the means by which the townships are compelled to obey in these different cases: I here merely show the existence of the obligation. Strict as this obligation is, the government of the State imposes it in principle only, and in its performance the township resumes all its independent rights. Thus, taxes are voted by the State, but they are assessed and collected by the township; the existence of a school is obligatory, but the township builds, pays,

and superintends it. In France the State-collector receives the local imposts ; in America the town-collector receives the taxes of the State. Thus the French Government lends its agents to the commune ; in America, the township is the agent of the Government. This fact alone shows the extent of the differences which exist between the two nations.

PUBLIC SPIRIT OF THE TOWNSHIPS OF NEW ENGLAND.

How the township of New England wins the affections of its inhabitants.—Difficulty of creating local public spirit in Europe.—The rights and duties of the American township favourable to it.—Characteristics of home in the United States.—Manifestations of public spirit in New England.—Its happy effects. “,

In America, not only do municipal bodies exist, but they are kept alive and supported by public spirit. The township of New England possesses two advantages which infallibly secure the attentive interest of mankind, namely, independence and authority. Its sphere is indeed small and limited, but within that sphere its action is unrestrained ; and its independence would give to it a real importance, even if its extent and population did not ensure it.

It is to be remembered that the affections of men are generally turned only where there is strength. Patriotism is not durable in a conquered nation. The New Englander is attached to his township,

not only because he was born in it, but because it constitutes a strong and free social body of which he is a member, and whose government claims and deserves the exercise of his sagacity. In Europe the absence of local public spirit is a frequent subject of regret to those who are in power ; every one agrees that there is no surer guarantee of order and tranquillity, and yet nothing is more difficult to create. If the municipal bodies were made powerful and independent, the authorities of the nation might be disunited, and the peace of the country endangered. Yet, without power and independence, a town may contain good subjects, but it can have no active citizens. Another important fact is that the township of New England is so constituted as to excite the warmest of human affections, without arousing the ambitious passions of the heart of man. The officers of the county are not elected, and their authority is very limited. Even the State is only a second-rate community, whose tranquil and obscure administration offers no inducement sufficient to draw men away from the circle of their interests into the turmoil of public affairs. The federal government confers power and honour on the men who conduct it ; but these individuals can never be very numerous. The high station of the Presidency can only be reached at an advanced period of life ; and the other federal functionaries are generally men who have been favoured by fortune, or distinguished in some other career. Such

cannot be the permanent aim of the ambitious. But the township serves as a centre for the desire of public esteem, the want of exciting interests, and the taste for authority and popularity, in the midst of the ordinary relations of life; and the passions which commonly embroil society, change their character when they find a vent so near the domestic hearth and the family circle.

In the American States power has been disseminated with admirable skill, for the purpose of interesting the greatest possible number of persons in the common weal. Independently of the electors who are from time to time called into action, the body politic is divided into innumerable functionaries and officers, who all, in their several spheres, represent the same powerful corporation in whose name they act. The local administration thus affords an unfailing source of profit and interest to a vast number of individuals.

The American system, which divides the local authority among so many citizens, does not scruple to multiply the functions of the town officers. For in the United States it is believed, and with truth, that patriotism is a kind of devotion which is strengthened by ritual observance. In this manner the activity of the township is continually perceptible; it is daily manifested in the fulfilment of a duty, or the exercise of a right; and a constant though gentle motion is thus kept up in society, which animates without disturbing it.

The American attaches himself to his home, as the mountaineer clings to his hills, because the characteristic features of his country are there more distinctly marked than elsewhere. The existence of the townships of New England is in general a happy one. Their government is suited to their tastes, and chosen by themselves. In the midst of the profound peace and general comfort which reign in America, the commotions of municipal discord are unfrequent. The conduct of local business is easy. The political education of the people has long been complete; say rather that it was complete when the people first set foot upon the soil. In New England no tradition exists of a distinction of ranks; no portion of the community is tempted to oppress the remainder; and the abuses which may injure isolated individuals are forgotten in the general contentment which prevails. If the government is defective, (and it would no doubt be easy to point out its deficiencies,) the fact that it really emanates from those it governs, and that it acts, either ill or well, casts the protecting spell of a parental pride over its faults. No term of comparison disturbs the satisfaction of the citizen: England formerly governed the mass of the colonies, but the people was always sovereign in the township, where its rule is not only an ancient, but a primitive state.

The native of New England is attached to his township because it is independent and free: his

cooperation in its affairs ensures his attachment to its interest ; the well-being it affords him secures his affection ; and its welfare is the aim of his ambition and of his future exertions : he takes a part in every occurrence in the place ; he practises the art of government in the small sphere within his reach ; he accustoms himself to those forms which can alone ensure the steady progress of liberty ; he imbibes their spirit ; he acquires a taste for order, comprehends the union or the balance of powers, and collects clear practical notions on the nature of his duties and the extent of his rights.

THE COUNTIES OF NEW ENGLAND.

THE division of the counties in America has considerable analogy with that of the arrondissements of France. The limits of the counties are arbitrarily laid down, and the various districts which they contain have no necessary connexion, no common tradition or natural sympathy ; their object is simply to facilitate the administration of public affairs.

The extent of the township was too small to contain a system of judicial institutions ; each county has however a court of justice¹, a sheriff to execute its decrees, and a prison for criminals. There are certain wants which are felt alike by all the townships of a county ; it is therefore natural that they

¹ See the Act of the 14th February 1821. *Laws of Massachusetts*, vol. i. p. 551.

should be satisfied by a central authority. In the State of Massachusetts this authority is vested in the hands of several magistrates, who are appointed by the Governor of the State, with the advice¹ of his council². The officers of the county have ~~only~~ a limited and occasional authority, which is applicable to certain predetermined cases. The State and the townships possess all the power requisite to conduct public business. The budget of the county is only drawn up by its officers, and is voted by the legislature³. There is no assembly which directly or indirectly represents the county: it has therefore, properly speaking, no political existence.

A twofold tendency may be discerned in the American constitutions, which impels the legislator to centralize the legislative, and to disperse the executive power. The township of New England has in itself an indestructible element of independence; but this distinct existence could only be fictitiously introduced into the county, where its utility has not been felt. All the townships united have but one representation, which is the State, the centre of the national authority: beyond the action of the township and that of the nation, nothing can be said to exist but the influence of individual exertion.

¹ See the Act of the 20th February 1819. Laws of Massachusetts, vol. ii. p. 494.

² The council of the Governor is an elective body.

³ See the Act of 2nd November 1798. Laws of Massachusetts, vol. i. p. 61.

ADMINISTRATION IN NEW ENGLAND.

Administration not perceived in America.—Why?—The Europeans believe that liberty is promoted by depriving the social authority of some of its rights; the Americans, by dividing its exercise.—Almost all the administration confined to the township, and divided amongst the town-officers.—No trace of an administrative hierarchy to be perceived either in the township, or above it.—The reason of this.—How it happens that the administration of the State is uniform.—Who is empowered to enforce the obedience of the township and the county to the law.—The introduction of judicial power into the administration.—Consequence of the extension of the elective principle to all functionaries.—The Justice of the Peace in New England.—By whom appointed.—County officer:—ensures the administration of the townships.—Court of Sessions.—Its action.—Right of inspection and indictment disseminated like the other administrative functions.—Informers encouraged by the division of fines.

Nothing is more striking to an European traveller in the United States than the absence of what we term the Government, or the Administration. Written laws exist in America, and one sees that they are daily executed; but although everything is in motion, the hand which gives the impulse to the social machine can nowhere be discovered. Nevertheless, as all peoples are obliged to have recourse to certain grammatical forms, which are the foundation of human language, in order to express their thoughts; so all communities are obliged to secure their existence by submitting to a certain portion of authority, without which they fall a prey to anarchy.

This authority may be distributed in several ways, but it must always exist somewhere.

There are two methods of diminishing the force of authority in a nation :

The first is to weaken the ~~supreme power in its~~ very principle, by forbidding or preventing society from acting in its own defence under certain circumstances. To weaken authority in this manner is what is generally termed in Europe to lay the foundations of freedom.

The second manner of diminishing the influence of authority does not consist in stripping society of any of its rights, nor in paralysing its efforts, but in distributing the exercise of its privileges in various hands, and in multiplying functionaries, to each of whom the degree of power necessary for him to perform his duty is entrusted. There may be nations whom this distribution of social powers might lead to anarchy ; but in itself it is not anarchical. The action of authority is indeed thus rendered less irresistible, and less perilous, but it is not totally suppressed.

The revolution of the United States was the result of a mature and deliberate taste for freedom, not of a vague or ill-defined craving for independence. It contracted no alliance with the turbulent passions of anarchy ; but its course was marked, on the contrary, by an attachment to whatever was lawful and orderly.

It was never assumed in the United States that

the citizen of a free country has a right to do whatever he pleases ; on the contrary, social obligations were there imposed upon him more various than anywhere else ; no idea was ever entertained of attacking the principles, or of contesting the rights of society ; but the exercise of its authority was divided, to the end that the office might be powerful and the officer insignificant, and that the community should be at once regulated and free. In no country in the world does the law hold so absolute a language as in America ; and in no country is the right of applying it vested in so many hands. The administrative power in the United States presents nothing either central or hierarchical in its constitution, which accounts for its passing unperceived. The power exists, but its representative is not to be perceived.

We have already seen that the independent townships of New England protect their own private interests ; and the municipal magistrates are the persons to whom the execution of the laws of the State is most frequently entrusted¹. Besides the general laws, the States sometimes passes general police re-

¹ See 'The Town-Officer,' especially at the words SELECTMEN, ASSESSORS, COLLECTORS, SCHOOLS, SURVEYORS OF HIGHWAYS. I take one example in a thousand : the State prohibits travelling on the Sunday ; the *tything-men*, who are town-officers, are especially charged to keep watch and to execute the law. See the *Laws of Massachusetts*, vol. i. p. 410.

The selectmen draw up the lists of electors for the election of the governor, and transmit the result of the ballot to the secretary of the State. See Act of the 24th Feb. 1796 ; *Id.*, vol. i. p. 488.

gulations ; but more commonly the townships and town-officers, conjointly with the justices of the peace, regulate the minor details of social life, according to the necessities of the different localities, and promulgate such enactments as concern the health of the community, and the peace as well as morality of the citizens¹. Lastly, these municipal magistrates provide, of their own accord and without any delegated powers, for those unforeseen emergencies which frequently occur in society².

It results from what we have said, that in the State of Massachusetts the administrative authority is almost entirely restricted to the township³, but that it is distributed among a great number of individuals. In the French commune there is properly but one official functionary, namely, the Maire ; and in New England we have seen that there are nineteen. These nineteen functionaries do not in general depend upon one another. The law carefully prescribes a circle of action to each of these magi-

¹ Thus, for instance, the selectmen authorize the construction of drains, point out the proper sites for slaughter-houses and other trades which are a nuisance to the neighbourhood. See the Act of the 7th June 1785: *Id.*, vol. i. p. 193.

² The selectmen take measures for the security of the public in case of contagious diseases, conjointly with the justices of the peace. See Act of the 22nd June 1797: vol. i. p. 539.

³ I say *almost*, for there are various circumstances in the annals of a township which are regulated by the justice of the peace in his individual capacity, or by the justices of the peace assembled in the chief town of the county ; thus licenses are granted by the justices. See the Act of the 28th Feb. 1787 : vol. i. p. 297.

strates ; and within that circle they have an entire right to perform their functions independently of any other authority. Above the township scarcely any trace of a series of official dignities is to be found. ~~It~~ sometimes happens that the county officers alter a decision of the townships, or town magistrates¹, but in general the authorities of the county have no right to interfere with the authorities of the township², except in such matters as concern the county.

The magistrates of the township, as well as those of the county, are bound to communicate their acts to the central government in a very small number of predetermined cases³. But the central government is not represented by an individual whose business it is to publish police regulations and ordonnances enforcing the execution of the laws ; to keep up a regular communication with the officers of

¹ Thus licenses are only granted to such persons as can produce a certificate of good conduct from the selectmen. If the selectmen refuse to give the certificate, the party may appeal to the justices assembled in the Court of Sessions ; and they may grant the license. See Act of 12th March 1808 : vol. ii. p. 186.

The townships have the right to make by-laws, and to enforce them by fines which are fixed by law ; but these by-laws must be approved by the Court of Sessions. See Act of 23rd March 1786 : vol. i. p. 254.

² In Massachusetts the county magistrates are frequently called upon to investigate the acts of the town magistrates ; but it will be shown further on that this investigation is a consequence, not of their administrative, but of their judicial power.

³ The town committees of schools are obliged to make an annual report to the secretary of the State on the condition of the school. See Act of 10th March 1827 : vol. iii. p. 183.

the township and the county ; to inspect their conduct, to direct their actions, or to reprimand their faults. There is no point which serves as a centre to the radii of the administration.

What, then, is the uniform plan on which the government is conducted, and how is the compliance of the counties and their magistrates, or the townships and their officers, enforced? In the States of New England the legislative authority embraces more subjects than it does in France ; the legislator penetrates to the very core of the administration ; the law descends to the most minute details ; the same enactment prescribes the principle and the method of its application, and thus imposes a multitude of strict and rigorously defined obligations on the secondary functionaries of the State. The consequence of this is, that if all the secondary functionaries of the administration conform to the law, society in all its branches proceeds with the greatest uniformity ; the difficulty remains of compelling the secondary functionaries of the administration to conform to the law. It may be affirmed, that, in general, society has only two methods of enforcing the execution of the laws at its disposal ; a discretionary power may be entrusted to a superior functionary of directing all the others, and of cashiering them in case of disobedience ; or the courts of justice may be authorized to inflict judicial penalties on the offender : but these two methods are not always available.

The right of directing a civil officer presupposes that of cashiering him if he does not obey orders, and of rewarding him by promotion if he fulfils his duties with propriety. But an elected magistrate can neither be cashiered nor promoted. All elective functions are inalienable until their term is expired. In fact, the elected magistrate has nothing either to expect or to fear from his constituents: and when all public offices are filled by ballot, there can be no series of official dignities, because the double right of commanding and of enforcing obedience can never be vested in the same individual, and because the power of issuing an order can never be joined to that of inflicting a punishment or bestowing a reward.

The communities therefore in which the secondary functionaries of the government are elected, are perforce obliged to make great use of judicial penalties as a means of administration. This is not evident at first sight; for those in power are apt to look upon the institution of elective functionaries as one concession, and the subjection of the elected magistrate to the judges of the land as another. They are equally averse to both these innovations; and as they are more pressingly solicited to grant the former than the latter, they accede to the election of the magistrate, and leave him independent of the judicial power. Nevertheless, the second of these measures is the only thing that can possibly counterbalance the first; and it will be found that

an elective authority which is not subject to judicial power will, sooner or later, either elude all control or be destroyed. The courts of justice are the only possible medium between the central power and the administrative bodies: they alone can compel the elected functionary to obey, without violating the rights of the elector. The extension of judicial power in the political world ought therefore to be in the exact ratio of the extension of elective offices: if these two institutions do not go hand in hand, the State must fall into anarchy or into subjection.

It has always been remarked that habits of legal business do not render men apt to the exercise of administrative authority. The Americans have borrowed from the English, their fathers, the idea of an institution which is unknown upon the continent of Europe: I allude to that of the Justices of the Peace.

The Justice of the Peace is a sort of *mezzo termine* between the magistrate and the man of the world, between the civil officer and the judge. A justice of the peace is a well-informed citizen, though he is not necessarily versed in the knowledge of the laws. His office simply obliges him to execute the police regulations of society; a task in which good sense and integrity are of more avail than legal science. The justice introduces into the administration a certain taste for established forms and publicity, which renders him a most un-

serviceable instrument of despotism; and, on the other hand, he is not blinded by those superstitions which render legal officers unfit members of a government. The Americans have adopted the system of the English justices of the peace, but they have deprived it of that aristocratic character which is discernible in the mother-country. The Governor of Massachusetts appoints a certain number of justices of the peace in every county, whose functions last seven years¹. He further designates three individuals from amongst the whole body of justices, who form in each county what is called the Court of Sessions. The Justices take a personal share in public business; they are sometimes entrusted with administrative functions in conjunction with elected officers²; they sometimes constitute a tribunal, before which the magistrates summarily prosecute a refractory citizen, or the citizens inform against the abuses of the magistrate. But it is in the Court of Sessions that they exercise

¹ We shall hereafter learn what a Governor is: I shall content myself with remarking in this place that he represents the executive power of the whole State.

² See the Constitution of Massachusetts, Chap. II. sect 1. § 9; Chap. III. § 3.

³ Thus, for example, a stranger arrives in a township from a country where a contagious disease prevails, and he falls ill. Two justices of the peace can, with the assent of the selectmen, order the sheriff of the county to remove and take care of him. Act of 22nd June 1797: vol. I. p. 540.

In general the justices interfere in all the important acts of the administration, and give them a semi-judicial character.

their most important functions. This court meets twice a year in the county town; in Massachusetts it is empowered to enforce the obedience of the greater number¹ of public officers. It must be observed, that in the State of Massachusetts the Court of Sessions is at the same time an administrative body, properly so called, and a political tribunal. It has been asserted that the county is a purely administrative division. The Court of Sessions presides over that small number of affairs which, as they concern several townships, or all the townships of the county in common, cannot be entrusted to any one of them in particular. In all that concerns county business, the duties of the Court of Sessions are therefore purely administrative; and if in its investigations it occasionally

¹ I say *the greater number*, because certain administrative misdemeanours are brought before the ordinary tribunals. If, for instance, a township refuses to make the necessary expenditure for its schools, or to name a school-committee, it is liable to a heavy fine. But this penalty is pronounced by the Supreme Judicial Court or the Court of Common Pleas. See Act of 10th March 1827, Laws of Massachusetts, vol. iii. p. 190. Or when a township neglects to provide the necessary war-stores. Act of 21st February 1822, *Id.* vol. ii. p. 570.

² In their individual capacity the Justices of the Peace take a part in the business of the counties and townships. The more important acts of the municipal government are rarely decided upon without the cooperation of one of their body.

³ These affairs may be brought under the following heads: 1. The erection of prisons and courts of justice. 2. The county budget, which is afterwards voted by the State. 3. The assessment of the taxes so voted. 4. Grants of certain patents. 5. The laying down and repairs of the county roads.

borrows the forms of judicial procedure, it is only with a view to its own information¹, or as a guarantee to the community over which it presides. But when the administration of the township is brought before it, it almost always acts as a judicial body, and in some few cases as an administrative assembly.

The first difficulty is to procure the obedience of an authority as entirely independent of the general laws of the State as the township is. We have stated that assessors are annually named by the town-meetings to levy the taxes. If a township attempts to evade the payment of the taxes by neglecting to name its assessors, the Court of Sessions condemns it to a heavy penalty². The fine is levied on each of the inhabitants; and the sheriff of the county, who is an officer of justice, executes the mandate. Thus it is that in the United States the authority of the Government is mysteriously concealed under the forms of a judicial sentence; and its influence is at the same time fortified by that irresistible power with which men have invested the formalities of law.

These proceedings are easy to follow, and to understand. The demands made upon a township are in general plain and accurately defined; they consist in a simple fact without any complication,

¹ Thus, when a road is under consideration, almost all difficulties are disposed of by the aid of the Jury.

² See Act of 20th February 1786, Laws of Massachusetts, vol. i. p. 217.

or in a principle without its application in detail¹. But the difficulty increases when it is not the obedience of the township, but that of the town-officers, which is to be enforced. All the reprehensible actions of which a public functionary may be guilty are reducible to the following heads :

He may execute the law without energy or zeal ;

He may neglect to execute the law ;

He may do what the law enjoins him not to do.

The last two violations of duty can alone come under the cognizance of a tribunal ; a positive and appreciable fact is the indispensable foundation of an action at law. Thus, if the selectmen omit to fulfil the legal formalities usual at town-elections, they may be condemned to pay a fine² ; but when the public officer performs his duty without ability, and when he obeys the letter of the law without zeal or energy, he is at least beyond the reach of judicial interference. The Court of Sessions, even when it is invested with its administrative powers, is in this case unable to compel him to a more satis-

¹ There is an indirect method of enforcing the obedience of a township. Suppose that the funds which the law demands for the maintenance of the roads have not been voted ; the town-surveyor is then authorized, *ex officio*, to levy the supplies. As he is personally responsible to private individuals for the state of the roads, and indictable before the Court of Sessions, he is sure to employ the extraordinary right which the law gives him against the township. Thus by threatening the officer, the Court of Sessions exacts compliance from the town. See Act of 5th March 1787, *Id.* vol. i. p. 305.

² Laws of Massachusetts, vol. ii. p. 45.

factory obedience. The fear of removal is the only check to these quasi-offences ; and as the Court of Sessions does not originate the town-authorities, it cannot remove functionaries whom it does not appoint. Moreover, a perpetual investigation would be necessary to convict the subordinate officer of negligence or lukewarmness ; and the Court of Sessions sits but twice a year, and then only judges such offences as are brought before its notice. The only security of that active and enlightened obedience, which a court of justice cannot impose upon public officers, lies in the possibility of their arbitrary removal. In France this security is sought for in powers exercised by the heads of the administration ; in America it is sought for in the principle of election.

Thus, to recapitulate in a few words what I have been showing :

If a public officer in New England commits a crime in the exercise of his functions, the ordinary courts of justice are always called upon to pass sentence upon him.

If he commits a fault in his official capacity, a purely administrative tribunal, is empowered to punish him ; and, if the affair is important or urgent, the judge supplies the omission of the functionary¹.

¹ If, for instance, a township persists in refusing to name its assessors, the Court of Sessions nominates them ; and the magistrates thus appointed are invested with the same authority as elected officers. See the Act quoted above, 20th Feb. 1787.

Lastly, if the same individual is guilty of one of those intangible offences, of which human justice has no cognizance, he annually appears before a tribunal from which there is no appeal, which can at once reduce him to insignificance, and deprive him of his charge. This system undoubtedly possesses great advantages, but its execution is attended with a practical difficulty which it is important to point out.

I have already observed that the administrative tribunal, which is called the Court of Sessions, has no right of inspection over the town-officers. It can only interfere when the conduct of a magistrate is specially brought under its notice ; and this is the delicate part of the system. The Americans of New England are unacquainted with the office of public prosecutor in the Court of Sessions¹, and it may readily be perceived that it could not have been established without difficulty. If an accusing magistrate had merely been appointed in the chief town of each county, and if he had been unassisted by agents in the townships, he would not have been better acquainted with what was going on in the county than the members of the Court of Sessions. But to appoint agents in each township would have been to centre in his person the most formidable of powers, that of a judicial administration. More-

¹ I say the Court of Sessions, because in common courts there is a magistrate who exercises some of the functions of a public prosecutor.

over, laws are the children of habit, and nothing of the kind exists in the legislation of England. The Americans have therefore divided the offices of inspection and of prosecution as well as all ~~the other~~ functions of the administration. Grand-jurors are bound by the law to apprise the court to which they belong of all the misdemeanours which may have been committed in their county¹. There are certain great offences which are officially prosecuted by the State²; but more frequently the task of punishing delinquents devolves upon the fiscal officer, whose province it is to receive the fine: thus the treasurer of the township is charged with the prosecution of such administrative offences as fall under his notice. But a more especial appeal is made by American legislation to the private interest of the citizen³; and this great principle is constantly to be met with in studying the laws of the United States. American legislators are more apt to give men credit for intelligence than for honesty; and they rely not a little on personal cupidity for the execution of the laws. When an individual is

¹ The Grand-jurors are, for instance, bound to inform the court of the bad state of the roads. *Laws of Massachusetts*, vol. i. p. 308.

² If, for instance, the treasurer of the county holds back his accounts. *Laws of Massachusetts*, vol. i. p. 406.

³ Thus, if a private individual breaks down or is wounded in consequence of the badness of a road, he can sue the township or the county for damages at the sessions. *Laws of Massachusetts*, vol. i. p. 309.

really and sensibly injured by an administrative abuse, it is natural that his personal interest should induce him to prosecute. But if a legal formality be required, which, however advantageous to the community, is of small importance to individuals, plaintiffs may be less easily found; and thus, by a tacit agreement, the laws might fall into disuse. Reduced by their system to this extremity, the Americans are obliged to encourage informers by bestowing on them a portion of the penalty in certain cases¹; and to ensure the execution of the laws by the dangerous expedient of degrading the morals of the people.

The only administrative authority above the county magistrates is, properly speaking, that of the Government.

¹ In cases of invasion or insurrection, if the town-officers neglect to furnish the necessary stores and ammunition for the militia, the township may be condemned to a fine of from 200 to 500 dollars. It may readily be imagined that in such a case it might happen that no one cared to prosecute; hence the law adds that all the citizens may indict offences of this kind, and that half the fine shall belong to the plaintiff. See Act of 6th March 1810, vol. ii. p. 236. The same clause is frequently to be met with in the Laws of Massachusetts. Not only are private individuals thus incited to prosecute the public officers, but the public officers are encouraged in the same manner to bring the disobedience of private individuals to justice. If a citizen refuses to perform the work which has been assigned to him upon a road, the road-surveyor may prosecute him, and he receives half the penalty for himself. See the Laws above quoted, vol. i. p. 308.

GENERAL REMARKS ON THE ADMINISTRATION OF THE UNITED STATES.

Differences of the States of the Union in their system of administration.—Activity and perfection of the local authorities decreases towards the South.—Power of the magistrate increases ; that of the elector diminishes.—Administration passes from the township to the county.—States of New York : Ohio : Pennsylvania.—Principles of administration applicable to the whole Union.—Election of public officers, and inalienability of their functions.—Absence of gradation of ranks.—Introduction of judicial resources into the administration.

I HAVE already premised that 'after having examined the constitution of the township and the county of New England in detail, I should take a general view of the remainder of the Union. Townships and a local activity exist in every State ; but in no part of the confederation is a township to be met with precisely similar to those of New England. The more we descend towards the South, the less active does the business of the township or parish become ; the number of magistrates, of functions, and of rights decreases ; the population exercises a less immediate influence on affairs ; town-meetings are less frequent, and the subjects of debate less numerous. The power of the elected magistrate is augmented, and that of the elector diminished, whilst the public spirit of the local communities is less awakened and less influential'.

¹ For details see the Revised Statutes of the State of New York, Part I. chap. xi. Vol. i. pp. 336-364., entitled, 'Of the powers, duties, and privileges of towns.'

See in the Digest of the Laws of Pennsylvania, the words

These differences may be perceived to a certain extent in the State of New York ; they are very sensible in Pennsylvania ; but they become less striking as we advance to the North-west. The majority of the emigrants who settle in the north-western States are natives of New England, and they carry the habits of their mother-country with them into that which they adopt. A township in Ohio is by no means dissimilar from a township in Massachusetts.

We have seen that in Massachusetts the principal part of the public administration lies in the township. It forms the common centre of the interests and affections of the citizens. But this ceases to be the case as we descend to States in which knowledge is less generally diffused, and where the township consequently offers fewer guarantees of a wise and active administration. As we leave New England, therefore, we find that the importance of the town is gradually transferred to the county, which becomes the centre of administration, and the intermediate power between the Government and the citizen. In Massachusetts the business of the county is conducted by the court of Sessions, which

ASSESSORS, COLLECTOR, CONSTABLES, OVERSEER OF THE POOR, SUPERVISORS OF HIGHWAYS : and in the Acts of a general nature of the State of Ohio, the Act of the 25th February 1834, relating to townships, p. 412 ; besides the peculiar dispositions relating to divers town-officers, such as Township's Clerk, Trustees, Overseers of the Poor, Fence-viewers, Appraisers of Property, Township's Treasurer, Constables, Supervisors of Highways.

is composed of a *quorum* named by the Governor and his council; but the county has no representative assembly, and its expenditure is voted by the national legislature. In the great State of New York, on the contrary, and in those of Ohio and Pennsylvania, the inhabitants of each county choose a certain number of representatives, who constitute the assembly of the county¹. The county assembly has the right of taxing the inhabitants to a certain extent; and in this respect it enjoys the privileges of a real legislative body: at the same time it exercises an executive power in the county, frequently directs the administration of the townships, and restricts their authority within much narrower bounds than in Massachusetts.

Such are the principal differences which the systems of county and town administration present in the Federal States. Were it my intention to examine the provisions of American law minutely, I should have to point out still further differences in the executive details of the several communities. But what I have already said may suffice to show the general principles on which the administration

¹ See the Revised Statutes of the State of New York, Part I. chap. xi. vol. i. p. 340. *Id.*, chap. xii p. 366. : also in the Acts of the State of Ohio, an act relating to county commissioners, 25th Febrary 1824, p. 263. See the Digest of the Laws of Pennsylvania, at the words COUNTY-RATES and LEVIES, p. 170.

In the State of New York each township elects a representative, who has a share in the administration of the county as well as in that of the township.

of the United States rests. These principles are differently applied ; their consequences are more or less numerous in various localities ; but they are always substantially the same. The laws differ, and their outward features change, but their character does not vary. If the township and the county are not everywhere constituted in the same manner, it is at least true that in the United States the county and the township are always based upon the same principle, namely, that every one is the best judge of what concerns himself alone, and the person most able to supply his private wants. The township and the county are therefore bound to take care of their special interests : the State governs, but it does not interfere with their administration. Exceptions to this rule may be met with, but not a contrary principle.

The first consequence of this doctrine has been to cause all the magistrates to be chosen either by, or at least from amongst, the citizens. As the officers are everywhere elected, or appointed for a certain period, it has been impossible to establish the rules of a dependent series of authorities ; there are almost as many independent functionaries as there are functions, and the executive power is disseminated in a multitude of hands. Hence arose the indispensable necessity of introducing the control of the courts of justice over the administration, and the system of pecuniary penalties, by which the secondary bodies and their representa-

tives are constrained to obey the laws. This system obtains from one end of the Union to the other. The power of punishing the misconduct of public officers, or of performing the part of the executive, in urgent cases, has not, however, been bestowed on the same judges in all the States. The Anglo-Americans derived the institution of Justices of the Peace from a common source; but although it exists in all the States, it is not always turned to the same use. The justices of the peace everywhere participate in the administration of the townships and the counties¹, either as public officers or as the judges of public misdemeanours; but in most of the States the more important classes of public offences come under the cognizance of the ordinary tribunals.

The election of public officers, or the inalienability of their functions, the absence of a gradation of powers, and the introduction of a judicial control over the secondary branches of the administration, are the universal characteristics of the American system from Maine to the Floridas. In some States (and that of New York has advanced most in this direction) traces of a centralized administration begin to be discernible. In the State of New York the officers of the central government exercise, in certain cases, a sort of in-

¹ In some of the Southern States the county-courts are charged with all the details of the administration. See the Statutes of the State of Tennessee, *arts. JUDICIARY, TAXES, &c.*

specification or control over the secondary bodies'. At other times they constitute a court of appeal for the decision of affairs'. In the State of New York judicial penalties are less used than in other parts as a means of administration; and the right of prosecuting the offences of public officers is vest-

¹ For instance, the direction of public instruction centres in the hands of the Government. The legislature names the members of the University, who are denominated Regents; the Governor and Lieutenant-Governor of the State are necessarily of the number. Revised Statutes, vol. i. p. 455. The Regents of the University annually visit the colleges and academies, and make their report to the legislature. Their superintendence is not inefficient, for several reasons: the colleges in order to become corporations stand in need of a charter, which is only granted on the recommendation of the Regents: every year funds are distributed by the State for the encouragement of learning, and the Regents are the distributors of this money. See Chap. xv. 'Public Instruction,' Revised Statutes, vol. i. p. 455.

The school-commissioners are obliged to send an annual report to the Superintendent of the Republic. *Id.*, p. 488.

A similar report is annually made to the same person on the number and condition of the poor. *Id.*, p. 631.

² If any one conceives himself to be wronged by the school-commissioners (who are town-officers), he can appeal to the superintendent of the primary schools, whose decision is final. Revised Statutes, vol. i. p. 487.

Provisions similar to those above cited are to be met with from time to time in the laws of the State of New York; but in general these attempts at centralization are weak and unproductive. The great authorities of the State have the right of watching and controlling the subordinate agents, without that of rewarding or punishing them. The same individual is never empowered to give an order and to punish disobedience; he has therefore the right of commanding, without the means of exacting compliance. In 1830 the Superintendent of Schools com-

ed in fewer hands¹. The same tendency is faintly observable in some other States²; but in general the prominent feature of the administration in the United States is its excessive local independence.

OF THE STATE.

I HAVE described the townships and the administration; it now remains for me to speak of the State and the Government. This is ground I may pass over rapidly, without fear of being misunderstood; for all I have to say is to be found in written forms of the various constitutions, which are easily to be procured³. These constitutions rest upon a simple and rational theory; their forms

plained in his Annual Report addressed to the legislature, that several school-commissioners had neglected, notwithstanding his application, to furnish him with the accounts which were due. He added that if this omission continued, he should be obliged to prosecute them, as the law directs, before the proper tribunals.

¹ Thus the district-attorney is directed to recover all fines below the sum of fifty dollars, unless such a right has been specially awarded to another magistrate. Revised Statutes, vol. i. p. 383.

² Several traces of centralization may be discovered in Massachusetts; for instance, the committees of the town-schools are directed to make an annual report to the Secretary of State. See Laws of Massachusetts, vol. i. p. 367.

³ See, at the end of the volume, the text of the Constitution of New York.

have been adopted by all constitutional nations, and are become familiar to us.

In this place, therefore, it is only necessary for me to give a short analysis; I shall endeavour afterwards to pass judgement upon what I now describe.

LEGISLATIVE POWER OF THE STATE.

Division of the Legislative Body into two Houses.—Senate.

House of Representatives.—Different functions of these two Bodies.

THE legislative power of the State is vested in two assemblies, the first of which generally bears the name of the Senate.

The Senate is commonly a legislative body; but it sometimes becomes an executive and judicial one. It takes a part in the government in several ways, according to the constitution of the different States¹; but it is in the nomination of public functionaries that it most commonly assumes an executive power. It partakes of judicial power in the trial of certain political offences, and sometimes also in the decision of certain civil cases². The number of its members is always small. The

¹ In Massachusetts the Senate is not invested with any administrative functions.

² As in the State of New York. See the Constitution at the end of the Volume.

other branch of the legislature, which is usually called the House of Representatives, has no share whatever in the administration, and only takes a part in the judicial power in as much as it impeaches public functionaries before the Senate.

- The members of the two Houses are nearly everywhere subject to the same conditions of election. They are chosen in the same manner, and by the same citizens.

The only difference which exists between them is, that the term for which the Senate is chosen is in general longer than that of the House of Representatives. The latter seldom remain in office longer than a year; the former usually sit two or three years.

By granting to the senators the privilege of being chosen for several years, and being renewed serially, the law takes care to preserve in the legislative body a nucleus of men already accustomed to public business, and capable of exercising a salutary influence upon the junior members.

The Americans, plainly, did not desire, by this separation of the legislative body into two branches, to make one house hereditary, and the other elective; one aristocratic, and the other democratic. It was not their object to create in the one a bulwark to power, whilst the other represented the interests and passions of the people. The only advantages which result from the present constitution of the United States are, the division of the legislative

power, and the consequent check upon political assemblies ; with the creation of a tribunal of appeal for the revision of the laws.

Time and experience, however, have convinced the Americans that if these are its only advantages, the division of the legislative power is still a principle of the greatest necessity. Pennsylvania was the only one of the United States which at first attempted to establish a single House of Assembly ; and Franklin himself was so far carried away by the necessary consequences of the principle of the sovereignty of the people, as to have concurred in the measure : but the Pennsylvanians were soon obliged to change the law, and to create two Houses. Thus the principle of the division of the legislative power was finally established, and its necessity may henceforward be regarded as a demonstrated truth.

This theory, which was nearly unknown to the republics of antiquity,—which was introduced into the world almost by accident, like so many other great truths,—and misunderstood by several modern nations; is at length become an axiom in the political science of the present age.

THE EXECUTIVE POWER OF THE STATE.

Office of Governor in an American State.—The place he occupies in relation to the Legislature.—His rights and his duties.—His dependence on the people.

THE executive power of the State may with truth be said to be *represented* by the Governor, although

he enjoys but a portion of its rights. The supreme magistrate, under the title of Governor, is the official moderator and counsellor of the legislature. He is armed with a suspensive veto, which allows him to stop, or at least to retard, its movements at pleasure. He lays the wants of the country before the legislative body, and points out the means which he thinks may be usefully employed in providing for them; he is the natural executor of its decrees in all the undertakings which interest the nation at large¹. In the absence of the legislature, the Governor is bound to take all necessary steps to guard the State against violent shocks and unforeseen dangers.

The whole military power of the State is at the disposal of the Governor. He is the commander of the militia, and head of the armed force. When the authority which is by general consent awarded to the laws is disregarded, the Governor puts himself at the head of the armed force of the State, to quell resistance and to restore order.

Lastly, the Governor takes no share in the administration of townships and counties, except it be indirectly in the nomination of Justices of the Peace, which nomination he has not the power to revoke².

The Governor is an elected magistrate, and is

¹ Practically speaking, it is not always the Governor who executes the plans of the legislature; it often happens that the latter, in voting a measure, names special agents to superintend the execution of it.

² In some of the States the justices of the peace are not elected by the Governor.

generally chosen for one or two years only ; so that he always continues to be strictly dependent upon the majority who returned him.

POLITICAL EFFECTS OF THE SYSTEM OF LOCAL ADMINISTRATION IN THE UNITED STATES.

Necessary distinction between the general centralization of Government, and the centralization of the local administration.—Local administration, not centralized in the United States ; great general centralization of the Government.—Some bad consequences resulting to the United States from the local administration.—Administrative advantages attending this order of things.—The power which conducts the Government is less regular, less enlightened, less learned, but much greater than in Europe.—Political advantages of this order of things.—In the United States the interests of the country are everywhere kept in view.—Support given to the Government by the community.—Provincial institutions more necessary in proportion as the social condition becomes more democratic.—Reason of this.

CENTRALIZATION is become a word of general and daily use, without any precise meaning being attached to it. Nevertheless, there exist two distinct kinds of centralization, which it is necessary to discriminate with accuracy.

Certain interests are common to all parts of a nation, such as the enactment of its general laws, and the maintenance of its foreign relations. Other interests are peculiar to certain parts of the nation ; such, for instance, as the business of different townships. When the power which directs the general

interests is centred in one place, or in the same persons, it constitutes a central government. The power of directing partial or local interests, when brought together, in like manner constitutes what may be termed a central administration.

Upon some points these two kinds of centralization coalesce ; but by classifying the objects which fall more particularly within the province of each of them, they may easily be distinguished.

It is evident that a central government acquires immense power when united to administrative centralization. Thus combined, it accustoms men to set their own will habitually and completely aside ; to submit, not only for once or upon one point, but in every respect and at all times. Not only, therefore, does this union of power subdue them by force, but it affects them in the ordinary habits of life, and influences each individual, first separately and then collectively.

These two kinds of centralization mutually assist and attract each other ; but they must not be supposed to be inseparable. It is impossible to imagine a more completely central government than that which existed in France under Louis XIV. ; when the same individual was the author and the interpreter of the laws, and the representative of France at home and abroad, he was justified in asserting that the State was identified with his person. Nevertheless, the administration was much less centralized under Louis XIV. than it is at the present day.

In England the centralization of the government is carried to great perfection: the State has the compact vigour of a man, and by the sole act of its will it puts immense engines in motion, and wields or collects the efforts of its authority. Indeed, I cannot conceive that a nation can enjoy a secure or prosperous existence without a powerful centralization of government. But I am of opinion that a central administration enervates the nations in which it exists by incessantly diminishing their public spirit. If such an administration succeeds in condensing at a given moment on a given point all the disposable resources of a people, it impairs at least the renewal of those resources. It may ensure a victory in the hour of strife, but it gradually relaxes the sinews of strength. It may contribute admirably to the transient greatness of a man, but it cannot ensure the durable prosperity of a people.

If we pay proper attention, we shall find that whenever it is said that a State cannot act because it has no central point, it is the centralization of the government in which it is deficient. It is frequently asserted, and we are prepared to assent to the proposition, that the German empire was never able to bring all its powers into action. But the reason was, that the State has never been able to enforce obedience to its general laws, because the several members of that great body always claimed the right, or found the means, of refusing their co-operation to the representatives of the com-

mon authority, even in the affairs which concerned the mass of the people ; in other words, because there was no centralization of government. The same remark is applicable to the Middle Ages ; the cause of all the confusion of feudal society was that the control, not only of local but of general interests, was divided amongst a thousand hands, and broken up in a thousand different ways : the absence of a central government prevented the nations of Europe from advancing with energy in any straightforward course.

We have shown that in the United States no central administration and no dependent series of public functionaries exist. Local authority has been carried to lengths which no European nation could endure without great inconvenience, and which has even produced some disadvantageous consequences in America. But in the United States the centralization of the Government is complete ; and it would be easy to prove that the national power is more compact than it has ever been in the old monarchies of Europe. Not only is there but one legislative body in each State ; not only does there exist but one source of political authority ; but numerous district-assemblies and county-courts have in general been avoided, lest they should be tempted to exceed their administrative duties and interfere with the Government. In America the legislature of each State is supreme : nothing can impede its authority ; neither privileges,

nor local immunities, nor personal influence, nor even the empire of reason, since it represents that majority which claims to be the sole organ of reason. Its own determination is, therefore, the only limit to its action. In juxtaposition to it, and under its immediate control, is the representative of the executive power, whose duty it is to constrain the refractory to submit by superior force. The only symptom of weakness lies in certain details of the action of the Government. The American republics have no standing armies to intimidate a discontented minority; but as no minority has as yet been reduced to declare open war, the necessity of an army has not been felt. The State usually employs the officers of the township or the county to deal with the citizens. Thus, for instance, in New England the assessor fixes the rate of taxes; the collector receives them; the town-treasurer transmits the amount to the public treasury; and the disputes which may arise are brought before the ordinary courts of justice. This method of collecting taxes is slow as well as inconvenient, and it would prove a perpetual hinderance to a Government whose pecuniary demands were large. In general it is desirable that in whatever materially affects its existence, the Government should be served by officers of its own, appointed by itself, removeable at pleasure, and accustomed to rapid methods of proceeding. But it will always be easy for the central Government, organized as it

is in America, to introduce new and more efficacious modes of action proportioned to its wants.

The absence of a central Government will not, then, as has often been asserted, prove the destruction of the republics of the New World; far from supposing that the American governments are not sufficiently centralized, I shall prove hereafter that they are too much so. The legislative bodies daily encroach upon the authority of the Government, and their tendency, like that of the French Convention, is to appropriate it entirely to themselves. Under these circumstances the social power is constantly changing hands, because it is subordinate to the power of the people, which is too apt to forget the maxims of wisdom and of foresight in the consciousness of its strength: hence arises its danger; and thus its vigour, and not its impotence, will probably be the cause of its ultimate destruction.

The system of local administration produces several different effects in America. The Americans seem to me to have outstepped the limits of sound policy, in isolating the administration of the Government; for order, even in second-rate affairs, is a matter of national importance¹. As the State has no administrative functionaries of its own, sta-

¹ The authority which represents the State ought not, I think, to waive the right of inspecting the local administration, even when it does not interfere more actively. Suppose, for instance, that an agent of the Government was stationed at some appointed spot in the county, to prosecute the misdemeanours of the town

tioned on different points of its territory, to whom it can give a common impulse, the consequence is that it rarely attempts to issue any general police regulations. The want of these regulations is severely felt, and is frequently observed by Europeans. The appearance of disorder which prevails on the surface, leads him, at first to imagine that society is in a state of anarchy ; nor does he perceive his mistake till he has gone deeper into the subject. Certain undertakings are of importance to the whole State ; but they cannot be put in execution, because there is no national administration to direct them. Abandoned to the exertions of the towns or counties, under the care of elected or temporary agents, they lead to no result, or at least to no durable benefit.

The partisans of centralization in Europe maintain that the Government directs the affairs of each locality better than the citizens could do it for themselves : this may be true when the central power is enlightened, and when the local districts are ignorant ; when it is as alert as they are slow ; when it is accustomed to act, and they to obey. Indeed, it is evident that this double tendency must augment with the increase of centralization, and that the

and county officers, would not a more uniform order be the result, without in any way compromising the independence of the township? Nothing of the kind, however, exists in America : there is nothing above the county-courts, which have, as it were, only an accidental cognizance of the offences they are meant to repress.

readiness of the one, and the incapacity of the others, must become more and more prominent. But I deny that such is the case when the people is as enlightened, as awake to its interests, and as accustomed to reflect on them, as the Americans are. I am persuaded, on the contrary, that in this case the collective strength of the citizens will always conduce more efficaciously to the public welfare than the authority of the Government. It is difficult to point out with certainty the means of arousing a sleeping population, and of giving it passions and knowledge which it does not possess ; it is, I am well aware, an arduous task to persuade men to busy themselves about their own affairs ; and it would frequently be easier to interest them in the punctilios of court etiquette than in the repairs of their common dwelling. But whenever a central administration affects to supersede the persons most interested, I am inclined to suppose that it is either misled, or desirous to mislead. * However enlightened and however skilful a central power may be, it cannot of itself embrace all the details of the existence of a great nation. Such vigilance exceeds the powers of man. And when it attempts to create and set in motion so many complicated springs, it must submit to a very imperfect result, or consume itself in bootless efforts.

Centralization succeeds more easily, indeed, in subjecting the external actions of men to a certain uniformity, which at last commands our re-

gard, independently of the objects to which it is applied, like those devotees who worship the statue, and forget the deity it represents. Centralization imparts without difficulty an admirable regularity to the routine of business; rules the details of the social police with sagacity; represses the smallest disorder and the most petty misdemeanours; maintains society in a *statu quo* alike secure from improvement and decline; and perpetuates a drowsy precision in the conduct of affairs, which is hailed by the heads of the administration as a sign of perfect order and public tranquillity¹: in short, it excels more in prevention than in action. Its force deserts it when society is to be disturbed or accelerated in its course; and if once the co-operation of private citizens is necessary to the furtherance of its measures, the secret of its impotence is disclosed. Even whilst it invokes their assistance, it is on the condition that they shall act exactly as much as the Government chooses, and exactly in the manner it appoints. They are to take charge of the details, without aspiring to guide the system;

¹ China appears to me to present the most perfect instance of that species of well-being which a completely central administration may furnish to the nations among which it exists. Travellers assure us that the Chinese have peace without happiness, industry without improvement, stability without strength, and public order without public morality. The condition of society is always tolerable, never excellent. I am convinced that, when China is opened to European observation, it will be found to contain the most perfect model of a central administration which exists in the universe.

they are to work in a dark and subordinate sphere, and only to judge the acts in which they have themselves co-operated, by their results. These, however, are not conditions on which the alliance of the human will is to be obtained ; its carriage must be free, and its actions responsible, or (such is the constitution of man,) the citizen had rather remain a passive spectator than a dependent actor in schemes with which he is unacquainted.

It is undeniable, that the want of those uniform regulations which control the conduct of every inhabitant of France is not unfrequently felt in the United States. Gross instances of social indifference and neglect are to be met with ; and from time to time disgraceful blemishes are seen, in complete contrast with the surrounding civilization. Useful undertakings which cannot succeed without perpetual attention and rigorous exactitude, are very frequently abandoned in the end ; for in America as well as in other countries the people is subject to sudden impulses and momentary exertions. The European who is accustomed to find a functionary always at hand to interfere with all he undertakes, has some difficulty in accustoming himself to the complex mechanism of the administration of the townships. In general it may be affirmed that the lesser details of the police, which render life easy and comfortable, are neglected in America ; but that the essential guarantees of man in society are as strong there as elsewhere. In

America the power which conducts the Government is far less regular, less enlightened, and less learned, but an hundredfold more authoritative, than in Europe. In no country in the world do the citizens make such exertions for the common weal; and I am acquainted with no people which has established schools as numerous and as efficacious, places of public worship better suited to the wants of the inhabitants, or roads kept in better repair. Uniformity or permanence of design, the minute arrangement of details¹, and the perfection of an ingenious administration, must not be sought for in the United States: but it will be easy to find,

¹ A writer of talent, who, in the comparison which he has drawn between the finances of France and those of the United States, has proved that ingenuity cannot always supply the place of a knowledge of facts, very justly reproaches the Americans for the sort of confusion which exists in the accounts of the expenditure in the townships; and after giving the model of a Departmental Budget in France, he adds: "We are indebted to centralization, that admirable invention of a great man, for the uniform order and method which prevails alike in all the municipal budgets, from the largest town to the humblest commune." Whatever may be my admiration of this result, when I see the communes of France, with their excellent system of accounts, plunged in the grossest ignorance of their true interests, and abandoned to so incorrigible an apathy that they seem to vegetate rather than to live; when, on the other hand, I observe the activity, the information, and the spirit of enterprise which keeps society in perpetual labour, in those American townships whose budgets are drawn up with small method and with still less uniformity, I am struck by the spectacle; for to my mind the end of a good government is to ensure the welfare of a people, and not to establish order and regularity in the midst of its misery and its distress: I am there-

on the other hand, the symptoms of a power, which, if it is somewhat barbarous, is at least robust ; and of an existence, which is checkered with accidents indeed, but cheered at the same time by animation and effort.

Granting for an instant that the villages and counties of the United States would be more usefully governed by a remote authority, which they had never seen, than by functionaries taken from the midst of them,—admitting, for the sake of argument, that the country would be more secure, and the resources of society better employed, if the whole administration centred in a single arm, still the *political* advantages which the Americans derive from their system would induce me to prefer it to the contrary plan. It profits me but little, after all, that a vigilant authority should protect the tranquillity of my pleasures, and constantly avert all dangers from my path, without my care or my concern, if this same authority is the absolute mistress of my liberty and of my life, and if it so monopolizes all the energy of existence, that when it languishes everything languishes around it, that when it sleeps everything must sleep, that when it dies the State itself must perish.

fore led to suppose that the prosperity of the American townships and the apparent confusion of their accounts, the distress of the French communes and the perfection of their Budget, may be attributable to the same cause. At any rate I am suspicious of a benefit which is united to so many evils, and I am not averse to an evil which is compensated by so many benefits.

In certain countries of Europe the natives consider themselves as a kind of settlers, indifferent to the fate of the spot upon which they live. • The greatest changes are effected without their concurrence, and (unless chance may have apprised them of the event,) without their knowledge ; nay more, the citizen is unconcerned as to the condition of his village, the police of his street, the repairs of the church or of the parsonage ; for he looks upon all these things as unconnected with himself, and as the property of a powerful stranger whom he calls the Government. He has only a life-interest in these possessions, and he entertains no notions of ownership or of improvement. This want of interest in his own affairs goes so far, that if his own safety or that of his children is endangered, instead of trying to avert the peril, he will fold his arms, and wait till the nation comes to his assistance. This same individual who has so completely sacrificed his own free will, has no natural propensity to obedience ; he cowers, it is true, before the pettiest officer ; but he braves the law with the spirit of a conquered foe, as soon as its superior force is removed : his oscillations between servitude and licence are perpetual. When a nation has arrived at this state, it must either change its customs and its laws, or perish : the source of public virtue is dry ; and though it may contain subjects, the race of citizens is extinct. Such communities are a natural prey to foreign conquest, and if they do

not disappear from the scene of life, it is because they are surrounded by other nations similar or inferior to themselves : it is because the instinctive feeling of their country's claims still exists in their hearts ; and because an involuntary pride in the name it bears, or a vague reminiscence of its by-gone fame, suffices to give them the impulse of self-preservation.

Nor can the prodigious exertions made by certain peoples in the defence of a country in which they may almost be said to have lived as aliens, be adduced in favour of such a system ; for it will be found that in these cases their main incitement was religion. The permanence, the glory, or the prosperity of the nation were become parts of their faith ; and in defending the country they inhabited, they defended that Holy City of which they were all citizens. The Turkish tribes have never taken an active share in the conduct of the affairs of society, but they accomplished stupendous enterprises as long as the victories of the Sultans were the triumphs of the Mahomedan faith. In the present age they are in rapid decay, because their religion is departing, and despotism only remains. Montesquieu, who attributed to absolute power an authority peculiar to itself, did it, as I conceive, undeserved honour ; for despotism, taken by itself, can produce no durable results. On close inspection we shall find that religion, and not fear, has ever been the cause of the long-lived prosperity of

absolute governments. Whatever exertions may be made, no true power can be founded among men which does not depend upon the free union of their inclinations ; and patriotism or religion are the only two motives in the world which can permanently direct the whole of a body politic to one end.

Laws cannot succeed in rekindling the ardour of an extinguished faith ; but men may be interested in the fate of their country by the laws. By this influence, the vague impulse of patriotism, which never abandons the human heart, may be directed and revived ; and if it be connected with the thoughts, the passions, and the daily habits of life, it may be consolidated into a durable and rational sentiment. Let it not be said that the time for the experiment is already past ; for the old age of nations is not like the old age of men, and every fresh generation is a new people ready for the care of the legislator.

It is not the *administrative*, but the *political* effects of the local system that I most admire in America. In the United States the interests of the country are everywhere kept in view ; they are an object of solicitude to the people of the whole Union, and every citizen is as warmly attached to them as if they were his own. He takes pride in the glory of his nation ; he boasts of its success, to which he conceives himself to have contributed ; and he rejoices in the general prosperity by which

he profits. The feeling he entertains towards the State is analogous to that which unites him to his family, and it is by a kind of egotism that he interests himself in the welfare of his country.

The European generally submits to a public officer because he represents a superior force; but to an American he represents a right. In America it may be said that no one renders obedience to man, but to justice and to law. If the opinion which the citizen entertains of himself is exaggerated, it is at least salutary; he unhesitatingly confides in his own powers, which appear to him to be all-sufficient. When a private individual meditates an undertaking, however directly connected it may be with the welfare of society, he never thinks of soliciting the cooperation of the Government; but he publishes his plan, offers to execute it himself, courts the assistance of other individuals, and struggles manfully against all obstacles. Undoubtedly he is often less successful than the State might have been in his position; but in the end, the sum of these private undertakings far exceeds all that the Government could effect.

As the administrative authority is within the reach of the citizens, whom it in some degree represents, it excites neither their jealousy nor their hatred: as its resources are limited, every one feels that he must not rely solely on its assistance. Thus when the administration thinks fit to interfere, it is not abandoned to itself as in Europe; the duties of

the private citizens are not supposed to have lapsed because the State assists in their fulfilment; but every one is ready, on the contrary, to guide and to support it. This action of individual exertions, joined to that of the public authorities, frequently performs what the most energetic central administration would be unable to execute. It would be easy to adduce several facts in proof of what I advance, but I had rather give only one, with which I am more thoroughly acquainted¹. In America, the means which the authorities have at their disposal for the discovery of crimes and the arrestation of criminals are few. A State-police does not exist, and passports are unknown. The criminal police of the United States cannot be compared to that of France; the magistrates and public prosecutors are not numerous, and the examinations of prisoners are rapid and oral. Nevertheless in no country does crime more rarely elude punishment. The reason is that every one conceives himself to be interested in furnishing evidence of the act committed, and in stopping the delinquent. During my stay in the United States, I witnessed the spontaneous formation of committees for the pursuit and prosecution of a man who had committed a great crime in a certain county. In Europe a criminal is an unhappy being who is struggling for his life against the ministers of justice, whilst the population is merely a spectator of the conflict: in America he is

¹ See Appendix, I.

looked upon as an enemy of the human race, and the whole of mankind is against him.

I believe that provincial institutions are useful to all nations, but nowhere do they appear to me to be more indispensable than amongst a democratic people. In an aristocracy, order can always be maintained in the midst of liberty; and as the rulers have a great deal to lose, order is to them a first-rate consideration. In like manner an aristocracy protects the people from the excesses of despotism, because it always possesses an organized power ready to resist a despot. But a democracy without provincial institutions has no security against these evils. How can a populace, unaccustomed to freedom in small concerns, learn to use it temperately in great affairs? What resistance can be offered to tyranny in a country where every private individual is impotent, and where the citizens are united by no common tie? Those who dread the licence of the mob, and those who fear the rule of absolute power, ought alike to desire the progressive growth of provincial liberties.

On the other hand, I am convinced that democratic nations are most exposed to fall beneath the yoke of a central administration for several reasons, amongst which is the following.

The constant tendency of these nations is to concentrate all the strength of the Government in the hands of the only power which directly represents the people; because, beyond the people nothing is

to be perceived but a mass of equal individuals confounded together. But when the same power is already in possession of all the attributes of the Government, it can scarcely refrain from penetrating into the details of the administration, and an opportunity of doing so is sure to present itself in the end, as was the case in France. In the French Revolution there were two impulses in opposite directions, which must never be confounded ; the one was favourable to liberty, the other to despotism. Under the ancient monarchy the King was the sole author of the laws ; and below the power of the Sovereign, certain vestiges of provincial institutions, half-destroyed, were still distinguishable. These provincial institutions were incoherent, ill compacted, and frequently absurd ; in the hands of the aristocracy they had sometimes been converted into instruments of oppression. The Revolution declared itself the enemy of royalty and of provincial institutions at the same time ; it confounded all that had preceded it—despotic power and the checks to its abuses—in indiscriminate hatred ; and its tendency was at once to republicanism and to centralization. This double character of the French Revolution is a fact which has been adroitly handled by the friends of absolute power. Can they be accused of labouring in the cause of despotism, when they are defending that central administration which was one of the great innovations of the Revolution ? In this manner

¹ See Appendix, K.

popularity may be conciliated with hostility to the rights of the people, and the secret slave of tyranny may be the professed admirer of freedom.

I have visited the two nations in which the system of provincial liberty has been most perfectly established, and I have listened to the opinions of different parties in those countries. In America I met with men who secretly aspired to destroy the democratic institutions of the Union ; in England I found others who attacked the aristocracy openly ; but I know of no one who does not regard provincial independence as a great benefit. In both countries I have heard a thousand different causes assigned for the evils of the State ; but the local system was never mentioned amongst them. I have heard citizens attribute the power and prosperity of their country to a multitude of reasons ; but they *all* placed the advantages of local institutions in the foremost rank.

Am I to suppose that when men who are naturally so divided on religious opinions, and on political theories, agree on one point, (and that, one of which they have daily experience,) they are all in error ? The only nations which deny the utility of provincial liberties are those which have fewest of them ; in other words, those who are unacquainted with the institution are the only persons who pass a censure upon it.

CHAPTER VI.

JUDICIAL POWER IN THE UNITED STATES, AND ITS
INFLUENCE ON POLITICAL SOCIETY.

The Anglo-Americans have retained the characteristics of judicial power which are common to all nations.—They have, however, made it a powerful political organ.—How.—In what the judicial system of the Anglo-Americans differs from that of all other nations.—Why the American judges have the right of declaring the laws to be unconstitutional.—How they use this right.—Precautions taken by the legislator to prevent its abuse.

I HAVE thought it essential to devote a separate chapter to the judicial authorities of the United States, lest their great political importance should be lessened in the reader's eyes by a merely incidental mention of them. Confederations have existed in other countries beside America; and republics have not been established upon the shores of the New World alone: the representative system of government has been adopted in several States of Europe; but I am not aware that any nation of the globe has hitherto organized a judicial power on the principle adopted by the Americans. The judicial organization of the United States is the institution which a stranger has the greatest difficulty in understanding. He hears the authority

of a judge invoked in the political occurrences of every day, and he naturally concludes that in the United States the judges are important political functionaries: nevertheless, when he examines the nature of the tribunals, they offer nothing which is contrary to the usual habits and privileges of those bodies; and the magistrates seem to him to interfere in public affairs by chance, but by a chance which recurs every day.

When the Parliament of Paris remonstrated, or refused to enregister an edict, or when it summoned a functionary accused of malversation to its bar, its political influence as a judicial body was clearly visible; but nothing of the kind is to be seen in the United States. The Americans have retained all the ordinary characteristics of judicial authority, and have carefully restricted its action to the ordinary circle of its functions.

The first characteristic of judicial power in all nations is the duty of arbitration. But rights must be contested in order to warrant the interference of a tribunal; and an action must be brought to obtain the decision of a judge. As long, therefore, as a law is uncontested, the judicial authority is not called upon to discuss it, and it may exist without being perceived. When a judge in a given case attacks a law relating to that case, he extends the circle of his customary duties, without however stepping beyond it; since he is in some measure obliged to decide upon the law, in order to decide

the case. But if he pronounces upon a law without resting upon a case, he clearly steps beyond his sphere, and invades that of the legislative authority.

The second characteristic of judicial power is that it pronounces on special cases, and not upon general principles. If a judge in deciding a particular point destroys a general principle, by passing a judgement which tends to reject all the inferences from that principle, and consequently to annul it, he remains within the ordinary limits of his functions. But if he directly attacks a general principle without having a particular case in view, he leaves the circle in which all nations have agreed to confine his authority; he assumes a more important, and perhaps a more useful influence than that of the magistrate, but he ceases to represent the judicial power.

The third characteristic of the judicial power is its inability to act unless it is appealed to, or until it has taken cognizance of an affair. This characteristic is less general than the other two; but notwithstanding the exceptions, I think it may be regarded as essential. The judicial power is by its nature devoid of action; it must be put in motion in order to produce a result. When it is called upon to repress a crime, it punishes the criminal; when a wrong is to be redressed, it is ready to redress it; when an act requires interpretation, it is prepared to interpret it; but it does not pursue

criminals, hunt out wrongs, or examine into evidence of its own accord. A judicial functionary who should open proceedings, and usurp the censure of the laws, would in some measure do violence to the passive nature of his authority.

The Americans have retained these three distinguishing characteristics of the judicial power ; an American judge can only pronounce a decision when litigation has arisen, he is only conversant with special cases, and he cannot act until the cause has been duly brought before the court. His position is therefore perfectly similar to that of the magistrate of other nations ; and he is nevertheless invested with immense political power. If the sphere of his authority and his means of action are the same as those of other judges, it may be asked whence he derives a power which they do not possess. The cause of this difference lies in the simple fact that the Americans have acknowledged the right of the judges to found their decisions on the Constitution, rather than on the laws. In other words, they have left them at liberty not to apply such laws as may appear to them to be unconstitutional.

I am aware that a similar right has been claimed—but claimed in vain—by courts of justice in other countries, but in America it is recognised by all the authorities ; and not a party, nor so much as an individual, is found to contest it. This fact can only be explained by the principles of the American

constitutions. In France the constitution is (or at least is supposed to be) immutable ; and the received theory is that no power has the right of changing any part of it. In England, the Parliament has an acknowledged right to modify the constitution ; as, therefore, the constitution may undergo perpetual changes, it does not in reality exist ; the Parliament is at once a legislative and a constituent assembly. The political theories of America are more simple and more rational. An American constitution is not supposed to be immutable as in France ; nor is it susceptible of modification by the ordinary powers of society as in England. It constitutes a detached whole, which, as it represents the determination of the whole people, is no less binding on the legislator than on the private citizen, but which may be altered by the will of the people in predetermined cases, according to established rules. In America the constitution may therefore vary, but as long as it exists it is the origin of all authority, and the sole vehicle of the predominating force.

It is easy to perceive in what manner these differences must act upon the position and the rights of the judicial bodies in the three countries I have cited. If in France the tribunals were authorized to disobey the laws on the ground of their being opposed to the constitution, the supreme power would in fact be placed in their hands, since they

alone would have the right of interpreting a constitution, the clauses of which can be modified by no authority. They would therefore take the place of the nation, and exercise as absolute a sway over society as the inherent weakness of judicial power would allow them to do. Undoubtedly, as the French judges are incompetent to declare a law to be unconstitutional, the power of changing the constitution is indirectly given to the legislative body, since no legal barrier would oppose the alterations which it might prescribe. But it is better to grant the power of changing the constitution of the people to men who represent (however imperfectly) the will of the people, than to men who represent no one but themselves.

It would be still more unreasonable to invest the English judges with the right of resisting the decisions of the legislative body, since the Parliament which makes the laws also makes the Constitution ; and consequently a law emanating from the three powers of the State can in no case be unconstitutional. But neither of these remarks is applicable to America.

In the United States the constitution governs the legislator as much as the private citizen : as it is the first of laws, it cannot be modified by a law ; and it is therefore just that the tribunals should obey the constitution in preference to any law. This condition is essential to the power of the judi-

cature ; for to select that legal obligation by which he is most strictly bound, is the natural right of every magistrate.

In France the Constitution is also the first of laws, and the judges have the same right to take it as the ground of their decisions ; but were they to exercise this right, they must perforce encroach on rights more sacred than their own, namely, on those of society, in whose name they are acting. In this case the State-motive clearly prevails over the motives of an individual. In America, where the nation can always reduce its magistrates to obedience by changing its Constitution, no danger of this kind is to be feared. Upon this point therefore the political and the logical reason agree, and the people as well as the judges preserve their privileges.

Whenever a law which the judge holds to be unconstitutional is argued in a tribunal of the United States, he may refuse to admit it as a rule ; this power is the only one which is peculiar to the American magistrate, but it gives rise to immense political influence. Few laws can escape the searching analysis of the judicial power for any length of time ; for there are few which are not prejudicial to some private interest or other, and none which may not be brought before a court of justice by the choice of parties, or by the necessity of the case. But from the time that a judge has refused to apply any given law in a case, that law loses a portion of its moral sanction. The persons to whose

interests it is prejudicial, learn that means exist of evading its authority ; and similar suits are multiplied, until it becomes powerless. One of two alternatives must then be resorted to : the people must alter the constitution, or the legislature must repeal the law.

The political power which the Americans have intrusted to their courts of justice is therefore immense ; but the evils of this power are considerably diminished, by the obligation which has been imposed of attacking the laws through the courts of justice alone. If the judge had been empowered to contest the laws on the ground of theoretical generalities ; if he had been enabled to open an attack or to pass a censure on the legislator, he would have played a prominent part in the political sphere ; and as the champion or the antagonist of a party, he would have arrayed the hostile passions of the nation in the conflict. But when a judge contests a law, applied to some particular case in an obscure proceeding, the importance of his attack is concealed from the public gaze ; his decision bears upon the interest of an individual, and if the law is slighted, it is only collaterally. Moreover, although it be censured, it is not abolished ; its moral force may be diminished, but its cogency is by no means suspended ; and its final destruction can only be accomplished by the reiterated attacks of judicial functionaries. It will readily be understood that by connecting the censureship of the laws with the

private interests of members of the community, and by intimately uniting the prosecution of the law with the prosecution of an individual, the legislation is protected from wanton assailants, and from the daily aggressions of party-spirit. The errors of the legislator are exposed whenever their evil consequences are most felt; and it is always a positive and appreciable fact which serves as the basis of a prosecution.

I am inclined to believe this practice of the American courts to be at once the most favourable to liberty as well as to public order. If the judge could only attack the legislator openly and directly, he would sometimes be afraid to oppose any resistance to his will; and at other moments party-spirit might encourage him to brave it every day. The laws would consequently be attacked when the power from which they emanate is weak, and obeyed when it is strong. That is to say, when it would be useful to respect them, they would be contested; and when it would be easy to convert them into an instrument of oppression, they would be respected. But the American judge is brought into the political arena independently of his own will. He only judges the law because he is obliged to judge a case. The political question which he is called upon to resolve is connected with the interest of the parties, and he cannot refuse to decide it without abdicating the duties of his post. He performs his functions as a citizen by fulfilling the strict duties which belong

to his profession as a magistrate. It is true that upon this system the judicial censureship which is exercised by the courts of justice over the legislation cannot extend to all laws indistinctly, in as much as some of them can never give rise to that precise species of contestation which is termed a law-suit ; and even when such a contestation is possible, it may happen that no one cares to bring it before a court of justice. The Americans have often felt this disadvantage, but they have left the remedy incomplete, lest they should give it an efficacy which might in some cases prove dangerous. Within these limits, the power vested in the American courts of justice of pronouncing a statute to be unconstitutional, forms one of the most powerful barriers which has ever been devised against the tyranny of political assemblies.

OTHER POWERS GRANTED TO THE AMERICAN JUDGES.

In the United States all the citizens have the right of indicting the public functionaries before the ordinary tribunals.—How they use this right.—Art. 75. of the French Constitution of the An VIII.—The Americans and the English cannot understand the purport of this clause.

It is perfectly natural that in a free country like America all the citizens should have the right of indicting public functionaries before the ordinary tribunals, and that all the judges should have the power of punishing public offences. The right

granted to the courts of justice of judging the agents of the executive government, when they have violated the laws, is so natural a one that it cannot be looked upon as an extraordinary privilege. Nor do the springs of government appear to me to be weakened in the United States by the custom which renders all public officers responsible to the judges of the land. The Americans seem, on the contrary, to have increased by this means that respect which is due to the authorities, and at the same time to have rendered those who are in power more scrupulous of offending public opinion. I was struck by the small number of political trials which occur in the United States, but I have no difficulty in accounting for this circumstance. A lawsuit, of whatever nature it may be, is always a difficult and expensive undertaking. It is easy to attack a public man in a journal, but the motives which can warrant an action at law must be serious. A solid ground of complaint must therefore exist, to induce an individual to prosecute a public officer, and public officers are careful not to furnish these grounds of complaint, when they are afraid of being prosecuted.

This does not depend upon the republican form of the American institutions, for the same facts present themselves in England. These two nations do not regard the impeachment of the principal officers of State as a sufficient guarantee of their independence. But they hold that the right of minor prosecutions, which are within the reach of the

whole community, is a better pledge of freedom than those great judicial actions which are rarely employed until it is too late.

In the Middle Ages, when it was very difficult to overtake offenders, the judges inflicted the most dreadful tortures on the few who were arrested, which by no means diminished the number of crimes. It has since been discovered that when justice is more certain and more mild, it is at the same time more efficacious. The English and the Americans hold that tyranny and oppression are to be treated like any other crime, by lessening the penalty and facilitating conviction.

In the year VIII. of the French Republic, a constitution was drawn up in which the following clause was introduced: " Art. 75. All the agents of the Government below the rank of ministers can only be prosecuted for offences relating to their several functions by virtue of a decree of the Conseil d'Etat; in which case the prosecution takes place before the ordinary tribunals." This clause survived the " Constitution de l'An VIII.," and it is still maintained in spite of the just complaints of the nation. I have always found the utmost difficulty in explaining its meaning to Englishmen or Americans. They were at once led to conclude that the Conseil d'Etat in France was a great tribunal, established in the centre of the kingdom, which exercised a preliminary and somewhat tyrannical jurisdiction in all political causes. But when I told them that the

Conseil d'Etat was not a judicial body, in the common sense of the term, but an administrative council composed of men dependent on the Crown;—so that the King, after having ordered one of his servants, called a Prefect, to commit an injustice, has the power of commanding another of his servants, called a Councillor of State, to prevent the former from being punished,—when I demonstrated to them that the citizen who has been injured by the order of the sovereign is obliged to solicit from the sovereign permission to obtain redress, they refused to credit so flagrant an abuse, and were tempted to accuse me of falsehood or of ignorance. It frequently happened before the Revolution that a Parliament issued a warrant against a public officer who had committed an offence ; and sometimes the proceedings were annulled by the authority of the Crown. Despotism then displayed itself openly, and obedience was extorted by force. We have then retrograded from the point which our forefathers had reached, since we allow things to pass under the colour of justice and the sanction of the law, which violence alone could impose upon them:

CHAPTER VII.

POLITICAL JURISDICTION IN THE UNITED STATES.

Definition of political jurisdiction.—What is understood by political jurisdiction in France, in England, and in the United States.—In America the political judge can only pass sentence on public officers.—He more frequently passes a sentence of removal from office than a penalty.—Political jurisdiction as it exists in the United States is, notwithstanding its mildness, and perhaps in consequence of that mildness, a most powerful instrument in the hands of the majority.

I UNDERSTAND, by political jurisdiction, that temporary right of pronouncing a legal decision with which a political body may be invested.

In absolute governments no utility can accrue from the introduction of extraordinary forms of procedure; the prince, in whose name an offender is prosecuted, is as much the sovereign of the courts of justice as of everything else, and the idea which is entertained of his power is of itself a sufficient security. The only thing he has to fear is, that the external formalities of justice should be neglected, and that his authority should be dishonoured, from a wish to render it more absolute. But in most free countries, in which the majority can never exercise the same influence upon the tribunals as an absolute monarch, the judicial power has occasionally been vested for a time in the representatives of

society. It has been thought better to introduce a temporary confusion between the functions of the different authorities, than to violate the necessary principle of the unity of government.

England, France, and the United States have established this political jurisdiction in their laws ; and it is curious to examine the different use which these three great nations have made of the principle. In England and in France the House of Lords and the *Chambre des Pairs* constitute the highest criminal court of their respective nations ; and although they do not habitually try all political offences, they are competent to try them all. Another political body enjoys the right of impeachment before the House of Lords : the only difference which exists between the two countries in this respect is, that in England the Commons may impeach whomsoever they please before the Lords, whilst in France the Deputies can only employ this mode of prosecution against the ministers of the Crown.

In both countries the Upper House may make use of all the existing penal laws of the nation to punish the delinquents.

In the United States, as well as in Europe, one branch of the legislature is authorized to impeach, and another to judge : the House of Representatives arraigns the offender, and the Senate awards his sentence. But the Senate can only try such persons as are brought before it by the House of Representatives, and those persons must belong to the

class of public functionaries. Thus the jurisdiction of the Senate is less extensive than that of the Peers of France, whilst the right of impeachment by the Representatives is more general than that of the Deputies. But the great difference which exists between Europe and America is, that in Europe political tribunals are empowered to inflict all the dispositions of the penal code, whilst in America, when they have deprived the offender of his official rank, and have declared him incapable of filling any political office for the future, their jurisdiction terminates and that of the ordinary tribunals begins.

Suppose, for instance, that the President of the United States has committed the crime of high treason ; the House of Representatives impeaches him, and the Senate degrades him ; he must then be tried by a jury, which alone can deprive him of his liberty or his life. This accurately illustrates the subject we are treating. The political jurisdiction which is established by the laws of Europe is intended to try great offenders, whatever may be their birth, their rank, or their powers in the State ; and to this end all the privileges of the courts of justice are temporarily extended to a great political assembly. The legislator is then transformed into the magistrate ; he is called upon to admit, to distinguish, and to punish the offence ; and as he exercises all the authority of a judge, the law restricts him to the observance of all the duties of that high office, and of all the formalities of

justice. When a public functionary is impeached before an English or a French political tribunal, and is found guilty, the sentence deprives him *ipso facto* of his functions, and it may pronounce him to be incapable of resuming them or any others for the future. But in this case the political interdiction is a consequence of the sentence, and not the sentence itself. In Europe the sentence of a political tribunal is therefore to be regarded as a judicial verdict, rather than as an administrative measure. In the United States the contrary takes place; and although the decision of the Senate is judicial in its form, since the Senators are obliged to comply with the practices and formalities of a court of justice; although it is judicial in respect to the motives on which it is founded, since the Senate is in general obliged to take an offence at common law as the basis of its sentence; nevertheless the object of the proceeding is purely administrative.

If it had been the intention of the American legislator to invest a political body with great judicial authority, its action would not have been limited to the circle of public functionaries, since the most dangerous enemies of the State may be in the possession of no functions at all; and this is especially true in republics, where party favour is the first of authorities, and where the strength of many a leader is increased by his exercising no legal power. If it had been the intention of the American legislator to give society the means of repressing State

offences by exemplary punishment, according to the practice of ordinary justice, the resources of the penal code would all have been placed at the disposal of the political tribunals. But the weapon with which they are entrusted is an imperfect one, and it can never reach the most dangerous offenders ; since men who aim at the entire subversion of the laws are not likely to murmur at a political interdiction.

The main object of the political jurisdiction which obtains in the United States is, therefore, to deprive the citizen of an authority which he has used amiss, and to prevent him from ever acquiring it again. This is evidently an administrative measure sanctioned by the formalities of a judicial decision. In this matter the Americans have created a mixed system ; they have surrounded the act which removes a public functionary with the securities of a political trial ; and they have deprived all political condemnations of their severest penalties. Every link of the system may easily be traced from this point ; we at once perceive why the American constitutions subject all the civil functionaries to the jurisdiction of the Senate, whilst the military, whose crimes are nevertheless more formidable, are exempted from that tribunal. In the civil service none of the American functionaries can be said to be removable ; the places which some of them occupy are inalienable, and the others derive their rights from a power which cannot be abrogated. It is therefore necessary to try them all in order to

deprive them of their authority. But military officers are dependent on the chief magistrate of the State, who is himself a civil functionary; and the decision which condemns him is a blow upon them all.

If we now compare the American and the European systems, we shall meet with differences no less striking in the different effects which each of them produces or may produce. In France and in England the jurisdiction of political bodies is looked upon as an extraordinary resource, which is only to be employed in order to rescue society from unwonted dangers. It is not to be denied that these tribunals, as they are constituted in Europe, are apt to violate the conservative principle of the balance of power in the State, and to threaten incessantly the lives and liberties of the subject. The same political jurisdiction in the United States is only indirectly hostile to the balance of power; it cannot menace the lives of the citizens, and it does not hover, as in Europe, over the heads of the community, since those only who have beforehand submitted to its authority upon accepting office are exposed to its severity. It is at the same time less formidable and less efficacious; indeed, it has not been considered by the legislators of the United States as a remedy for the more violent evils of society, but as an ordinary means of conducting the government. In this respect it probably exercises more real influence on the social body in America than in Europe. We must not be misled by the apparent mildness of the American legisla-

tion in all that relates to political jurisdiction. It is to be observed, in the first place, that in the United States the tribunal which passes sentence is composed of the same elements, and subject to the same influences, as the body which impeaches the offender, and that this uniformity gives an almost irresistible impulse to the vindictive passions of parties. If political judges in the United States cannot inflict such heavy penalties as those of Europe, there is the less chance of their acquitting a prisoner; and the conviction, if it is less formidable, is more certain. The principal object of the political tribunals of Europe is to punish the offender; the purpose of those in America is to deprive him of his authority. A political condemnation in the United States may, therefore, be looked upon as a preventive measure; and there is no reason for restricting the judges to the exact definitions of criminal law. Nothing can be more alarming than the excessive latitude with which political offences are described in the laws of America. Article II. Section iv. of the Constitution of the United States runs thus: "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." Many of the Constitutions of the States are even less explicit. "Public officers," says the Constitution of Massachusetts, "shall be impeached for misconduct or malad-

ministration." The Constitution of Virginia declares that all the civil officers who shall have offended against the State by maladministration, corruption, or other high crimes, may be impeached by the House of Delegates: in some constitutions no offences are specified, in order to subject the public functionaries to an unlimited responsibility¹. But I will venture to affirm, that it is precisely their mildness which renders the American laws most formidable in this respect. We have shown that in Europe the removal of a functionary and his political interdiction are consequences of the penalty he is to undergo, and that in America they constitute the penalty itself. The result is that in Europe political tribunals are invested with rights which they are afraid to use, and that the fear of punishing too much hinders them from punishing at all. But in America no one hesitates to inflict a penalty from which humanity does not recoil. To condemn a political opponent to death, in order to deprive him of his power, is to commit what all the world would execrate as a horrible assassination; but to declare that opponent unworthy to exercise that authority, to deprive him of it, and to leave him uninjured in life and liberty, may appear to be the fair issue of the struggle. But this sentence, which it is so easy to pronounce, is not the less fatally severe to the majority of those upon whom it is in-

¹ See the Constitutions of Illinois, Maine, Connecticut, and Georgia.

flicted. Great criminals may undoubtedly brave its intangible rigour, but ordinary offenders will dread it as a condemnation which destroys their position in the world, casts a blight upon their honour; and condemns them to a shameful inactivity worse than death. The influence exercised in the United States upon the progress of society by the jurisdiction of political bodies may not appear to be formidable, but it is only the more immense. It does not act directly upon the governed, but it renders the majority more absolute over those who govern; it does not confer an unbounded authority on the legislator which can only be exerted at some momentous crisis, but it establishes a temperate and regular influence, which is at all times available. If the power is decreased, it can, on the other hand, be more conveniently employed, and more easily abused. By preventing political tribunals from inflicting judicial punishments, the Americans seem to have eluded the worst consequences of legislative tyranny, rather than tyranny itself; and I am not sure that political jurisdiction, as it is constituted in the United States, is not the most formidable weapon which has ever been placed in the rude grasp of a popular majority. When the American republics begin to degenerate, it will be easy to verify the truth of this observation, by remarking whether the number of political impeachments augments¹.

CHAPTER VIII.

THE FEDERAL CONSTITUTION.

I HAVE hitherto considered each State as a separate whole, and I have explained the different springs which the people sets in motion, and the different means of action which it employs. But all the States which I have considered as independent are forced to submit, in certain cases, to the supreme authority of the Union. The time is now come for me to examine the partial sovereignty which has been conceded to the Union, and to cast a rapid glance over the Federal Constitution¹.

HISTORY OF THE FEDERAL CONSTITUTION.

Origin of the first Union.—Its weakness.—Congress appeals to the constituent authority.—Interval of two years between this appeal and the promulgation of the new Constitution.

THE thirteen colonies which simultaneously threw off the yoke of England towards the end of the last century, professed, as I have already observed, the same religion, the same language, the same customs, and almost the same laws; they were struggling against a common enemy; and these reasons were

¹ See the Constitution of the United States in the Appendix.

sufficiently strong to unite them one to another, and to consolidate them into one nation. But as each of them had enjoyed a separate existence, and a government within its own control, the peculiar interests and customs which resulted from this system were opposed to a compact and intimate union which would have absorbed the individual importance of each in the general importance of all. Hence arose two opposite tendencies, the one prompting the Anglo-Americans to unite, the other to divide their strength. As long as the war with the mother-country lasted, the principle of union was kept alive by necessity; and although the laws which constituted it were defective, the common tie subsisted in spite of their imperfections¹. But no sooner was peace concluded than the faults of the legislation became manifest, and the State seemed to be suddenly dissolved. Each colony became an independent republic, and assumed an absolute sovereignty. The federal government, condemned to impotence by its constitution, and no longer sustained by the presence of a common danger, witnessed the outrages offered to its flag by the great nations of Europe, whilst it was scarcely able to maintain its ground against the Indian tribes, and

¹ See the articles of the first confederation formed in 1778. This constitution was not adopted by all the States until 1781. See also, the analysis given of this constitution in the *Federalist*, from No. 15 to No. 22, inclusive, and Story's 'Commentaries on the Constitution of the United States,' pp. 85—115.

to pay the interest of the debt which had been contracted during the War of Independence. It was already on the verge of destruction, when it officially proclaimed its inability to conduct the government, and appealed to the constituent authority of the nation¹.

If America ever approached (for however brief a time) that lofty pinnacle of glory to which the proud fancy of its inhabitants is wont to point, it was at the solemn moment at which the power of the nation abdicated, as it were, the empire of the land. All ages have furnished the spectacle of a people struggling with energy to win its independence; and the efforts of the Americans in throwing off the English yoke have been considerably exaggerated. Separated from their enemies by three thousand miles of ocean, and backed by a powerful ally, the success of the United States may be more justly attributed to their geographical position than to the valour of their armies or the patriotism of their citizens. It would be ridiculous to compare the American war to the wars of the French Revolution, or the efforts of the Americans to those of the French, who, when they were attacked by the whole of Europe, without credit and without allies, were still capable of opposing a twentieth part of their population to their foes, and of bearing the torch of revolution beyond their frontiers whilst they stifled its devouring flame

¹ Congress made this declaration on the 21st of Feb. 1787.

within the bosom of their country. But it is a novelty in the history of society to see a great people turn a calm and scrutinizing eye upon itself when apprized by the legislature that the wheels of government are stopped; to see it carefully examine the extent of the evil, and patiently wait for two whole years until a remedy was discovered, which it voluntarily adopted without having wrung a tear or a drop of blood from mankind. At the time when the inadequacy of the first constitution was discovered, America possessed the double advantage of that calm which had succeeded the effervescence of the revolution, and of those great men who had led the revolution to a successful issue. The assembly which accepted the task of composing the second constitution was small¹; but George Washington was its President, and it contained the choicest talents and the noblest hearts which had ever appeared in the New World. This national commission, after long and mature deliberation, offered to the acceptance of the people the body of general laws which still rules the Union. All the States adopted it successively². The new Federal Government commenced its functions in 1789, after an interregnum of two years. The Revolution of America terminated when that of France began.

¹ It consisted of fifty-five members; Washington, Madison, Hamilton, and the two Morris were amongst the number.

² It was not adopted by the legislative bodies, but representatives were elected by the people for this sole purpose; and the new constitution was discussed at length in each of these assemblies.

SUMMARY OF THE FEDERAL CONSTITUTION.

Division of authority between the Federal Government and the States.—The Government of the States is the rule;—the Federal Government the exception.

THE first question which awaited the Americans was intricate, and by no means easy of solution: the object was so to divide the authority of the different States which composed the Union, that each of them should continue to govern itself in all that concerned its internal prosperity, whilst the entire nation, represented by the Union, should continue to form a compact body, and to provide for the general exigencies of the people. It was as impossible to determine beforehand, with any degree of accuracy, the share of authority which each of the two Governments was to enjoy, as to foresee all the incidents in the existence of a nation.

The obligations and the claims of the Federal Government were simple and easily definable, because the Union had been formed with the express purpose of meeting the general exigencies of the people; but the claims and obligations of the States were, on the other hand, complicated and various, because those Governments penetrated into all the details of social life. The attributes of the Federal Government were therefore carefully enumerated, and all that was not included amongst them was declared to constitute a part of the privileges of the

several Governments of the States. Thus the government of the States remained the rule, and that of the Confederation became the exception¹.

But as it was foreseen that, in practice, questions might arise as to the exact limits of this exceptional authority, and that it would be dangerous to submit these questions to the decision of the ordinary courts of justice, established in the States by the States themselves, a high Federal court was created², which was destined, amongst other functions, to maintain the balance of power which had been established by the Constitution between the two rival Governments³.

¹ See the Amendment to the Federal Constitution; *Federalist*, No. 32. Story, p. 711. Kent's Commentaries, vol. i. p. 364.

It is to be observed, that whenever the *exclusive* right of regulating certain matters is not reserved to Congress by the Constitution, the States may take up the affair, until it is brought before the National Assembly. For instance, Congress has the right of making a general law on bankruptcy, which, however, it neglects to do. Each State is then at liberty to make a law for itself. This point, however, has been established by discussion in the law-courts, and may be said to belong more properly to jurisprudence.

² The action of this court is indirect, as we shall hereafter show.

³ It is thus that the *Federalist*, No. 45, explains the division of supremacy between the Union and the States. "The powers delegated by the Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the internal order and prosperity of the State."

I shall often have occasion to quote the *Federalist* in this

PREROGATIVE OF THE FEDERAL GOVERNMENT.

Power of declaring war, making peace, and levying general taxes vested in the Federal Government.—What part of the internal policy of the country it may direct.—The Government of the Union in some respects more central than the King's Government in the Old French monarchy.

THE external relations of a people may be compared to those of private individuals, and they cannot be advantageously maintained without the agency of the single head of a Government. The exclusive right of making peace and war, of concluding treaties of commerce, of raising armies, and equipping fleets, was therefore granted to the Union¹. The necessity of a national Government was less imperiously felt in the conduct of the internal affairs of society; but there are certain general interests which can only be attended to with advantage by a gene-

work. When the bill, which has since become the Constitution of the United States, was submitted to the approval of the people, and the discussions were still pending, three men, who had already acquired a portion of that celebrity which they have since enjoyed, John Jay, Hamilton, and Madison, formed an association with the intention of explaining to the nation the advantages of the measure which was proposed. With this view they published a series of articles in the shape of a journal, which now form a complete treatise. They entitled their journal 'The Federalist,' a name which has been retained in the work. The Federalist is an excellent book, which ought to be familiar to the statesmen of all countries, although it especially concerns America.

¹ See Constitution, sect. 8. Federalist, Nos. 41 and 42. Kent's Commentaries, vol. i. p. 207. Story, pp. 358-382; *ibid.* pp. 409-426.

ral authority. The Union was invested with the power of controlling the monetary system, of directing the post-office, and of opening the great roads which were to establish a communication between the different parts of the country¹. The independence of the Government of each State was formally recognised in its sphere ; nevertheless, the Federal Government was authorized to interfere in the internal affairs of the States² in a few predetermined cases, in which an indiscreet abuse of their independence might compromise the security of the Union at large. Thus, whilst the power of modifying and changing their legislation at pleasure was preserved in all the republics, they were forbidden to enact *ex-post-facto* laws, or to create a class of nobles in their community³. Lastly, as it was necessary that the Federal Government should be able to fulfill its engagements, it was endowed with an unlimited power of levying taxes⁴.

In examining the balance of power as established by the Federal Constitution ; in remarking on the one hand the portion of sovereignty which has been

¹ Several other privileges of the same kind exist, such as that which empowers the Union to legislate on bankruptcy, to grant patents, and other matters in which its intervention is clearly necessary.

² Even in these cases its interference is indirect. The Union interferes by means of the tribunals, as will be hereafter shown.

³ Federal Constitution, sect. 10. art. 1.

⁴ Constitution, sect. 8, 9, and 10. Federalist, Nos. 30-36, inclusive, and 41-44. Kent's Commentaries, vol. i. pp. 207 and 381. Story, pp. 379 and 514.

reserved to the several States, and on the other the share of power which the Union has assumed, it is evident that the Federal legislators entertained the clearest and most accurate notions on the nature of the centralization of government. The United States form not only a republic, but a confederation; nevertheless the authority of the nation is more central than it was in several of the monarchies of Europe when the American Constitution was formed. Take, for instance, the two following examples.

Thirteen supreme courts of justice existed in France, which, generally speaking, had the right of interpreting the law without appeal; and those provinces which were styled *pays d'Etats*, were authorized to refuse their assent to an impost which had been levied by the sovereign who represented the nation.

In the Union there is but one tribunal to interpret, as there is one legislature to make, the laws; and an impost voted by the representatives of the nation is binding upon all the citizens. In these two essential points, therefore, the Union exercises more central authority than the French monarchy possessed, although the Union is only an assemblage of confederate republics.

In Spain certain provinces had the right of establishing a system of custom-house duties peculiar to themselves, although that privilege belongs, by its very nature, to the national sovereignty. In America the Congress alone has the right of regu-

lating the commercial relations of the States. The government of the Confederation is therefore more centralized in this respect than the kingdom of Spain. It is true that the power of the Crown in France or in Spain was always able to obtain by force whatever the Constitution of the country denied, and that the ultimate result was consequently the same ; but I am here discussing the theory of the Constitution.

FEDERAL POWERS.

AFTER having settled the limits within which the Federal Government was to act, the next point was to determine the powers which it was to exert.

LEGISLATIVE POWERS.

Division of the Legislative Body into two branches.—Difference in the manner of forming the two Houses.—The principle of the independence of the States predominates in the formation of the Senate.—The principle of the sovereignty of the nation in the composition of the House of Representatives.—Singular effects of the fact that a Constitution can only be logical in the early stages of a nation.

THE plan which had been laid down beforehand for the Constitutions of the several States was followed, in many points, in the organization of the powers of the Union. The Federal legislature of the Union was

composed of a Senate and a House of Representatives. A spirit of conciliation prescribed the observance of distinct principles in the formation of each of these two assemblies. I have already shown that two contrary interests were opposed to each other in the establishment of the Federal Constitution. These two interests had given rise to two opinions. It was the wish of one party to convert the Union into a league of independent States, or a sort of congress, at which the representatives of the several peoples would meet to discuss certain points of their common interests. The other party desired to unite the inhabitants of the American colonies into one sole nation, and to establish a Government, which should act as the sole representative of the nation, as far as the limited sphere of its authority would permit. The practical consequences of these two theories were exceedingly different.

The question was, whether a league was to be established instead of a national Government; whether the majority of the States, instead of the majority of the inhabitants of the Union, was to give the law: for every State, the small as well as the great, then retained the character of an independent power, and entered the Union upon a footing of perfect equality. If, on the contrary, the inhabitants of the United States were to be considered as belonging to one and the same nation, it was natural that the majority of the citizens of the Union

should prescribe the law. Of course the lesser States could not subscribe to the application of this doctrine without, in fact, abdicating their existence in relation to the sovereignty of the Confederation; since they would have passed from the condition of a coequal and colegislative authority, to that of an insignificant fraction of a great people. The former system would have invested them with an excessive authority, the latter would have annulled their influence altogether. Under these circumstances, the result was, that the strict rules of logic were evaded, as is usually the case when interests are opposed to arguments. A middle course was hit upon by the legislators, which brought together by force two systems theoretically irreconcilable.

The principle of the independence of the States prevailed in the formation of the Senate, and that of the sovereignty of the nation predominated in the composition of the House of Representatives. It was decided that each State should send two senators to Congress, and a number of representatives proportioned to its population¹. It results

¹ Every ten years Congress fixes anew the number of representatives which each State is to furnish. The total number was 69 in 1789, and 240 in 1833. (See American Almanac, 1834, p. 194.)

The Constitution decided that there should not be more than one representative for every 30,000 persons; but no minimum was fixed on. The Congress has not thought fit to augment the number of representatives in proportion to the increase of population. The first Act which was passed on the subject (14th of April,

from this arrangement that the State of New York has at the present day forty representatives, and only two senators ; the State of Delaware has two senators, and only one representative ; the State of Delaware is therefore equal to the State of New York in the Senate, whilst the latter has forty times the influence of the former in the House of Representatives. Thus, if the minority of the nation preponderates in the Senate, it may paralyse the decisions of the majority represented in the other House, which is contrary to the spirit of constitutional government.

These facts show how rare and how difficult it is rationally and logically to combine all the several parts of legislation. In the course of time different interests arise, and different principles are sanctioned by the same people ; and when a general constitution is to be established, these interests and principles are so many natural obstacles to the rigorous application of any political system, with all its consequences. The early stages of national existence are the only periods at which it is possible to maintain the complete logic of legislation ; and when we perceive a nation in the enjoyment of this advantage, before we hasten to conclude that

1792 : see *Laws of the United States* by Story, vol. i. p. 235,) decided that there should be one representative for every 33,000 inhabitants. The last Act, which was passed in 1832, fixes the proportion at one for 48,000. The population represented is composed of all the freemen and of three fifths of the slaves.

it is wise, we should do well to remember that it is young. When the Federal Constitution was formed, the interest of independence for the separate States, and the interest of Union for the whole people, were the only two conflicting interests which existed amongst the Anglo-Americans ; and a compromise was necessarily made between them.

It is, however, just to acknowledge that this part of the Constitution has not hitherto produced those evils which might have been feared. All the States are young and contiguous ; their customs, their ideas, and their wants are not dissimilar ; and the differences which result from their size or inferiority do not suffice to set their interests at variance. The small States have consequently never been induced to league themselves together in the Senate to oppose the designs of the larger ones ; and indeed there is so irresistible an authority in the legitimate expression of the will of a people, that the Senate could offer but a feeble opposition to the vote of the majority of the House of Representatives.

It must not be forgotten, on the other hand, that it was not in the power of the American legislators to reduce to a single nation the people for whom they were making laws. The object of the Federal Constitution was not to destroy the independence of the States, but to restrain it. By acknowledging the real authority of these secondary communities, (and it was impossible to deprive them of it,) they disavowed beforehand the habitual use of constraint

in enforcing the decisions of the majority. Upon this principle the introduction of the influence of the States into the mechanism of the Federal Government was by no means to be wondered at ; since it only attested the existence of an acknowledged power, which was to be humoured, and not forcibly checked.

A FURTHER DIFFERENCE BETWEEN THE SENATE AND THE HOUSE OF REPRESENTATIVES.

The Senate named by the provincial legislators,—the Representatives, by the people.—Double election of the former ;—single election of the latter.—Term of the different offices.—Peculiar functions of each House.

THE Senate not only differs from the other House in the principle which it represents, but also in the mode of its election, in the term for which it is chosen, and in the nature of its functions. The House of Representatives is named by the people, the Senate by the legislators of each State ; the former is directly elected, the latter is elected by an elected body ; the term for which the representatives are chosen is only two years, that of the senators is six. The functions of the House of Representatives are purely legislative, and the only share it takes in the judicial power is in the impeachment of public officers. The Senate cooperates in the work of legislation, and tries those political

offences which the House of Representatives submits to its decision. It also acts as the great executive council of the nation ; the treaties which are concluded by the President must be ratified by the Senate ; and the appointments he may make must be definitively approved by the same body¹.

THE EXECUTIVE POWER*.

Dependence of the President.—He is elective and responsible.—

He is free to act in his own sphere under the inspection, but not under the direction, of the Senate.—His salary fixed at his entry into office:—Suspensive veto.

THE American legislators undertook a difficult task in attempting to create an executive power dependent on the majority of the people, and nevertheless sufficiently strong to act without restraint in its own sphere. It was indispensable to the maintenance of the republican form of government that the representative of the executive power should be subject to the will of the nation:

The President is an elective magistrate. His honour, his property, his liberty, and his life are the securities which the people have for the temperate use of his power. But in the exercise of his

¹ See The Federalist, Nos. 52—66, inclusive. Story, pp. 199—314. Constitution of the United States, sections 2 and 3.

² See The Federalist, Nos. 67—77. Constitution of the U. S., art. 2. Story, p. 315, pp. 515—789. Kent's Commentaries, p. 255.

authority he cannot be said to be perfectly independent ; the Senate takes cognizance of his relations with foreign powers, and of the distribution of public appointments, so that he can neither be bribed, nor can he employ the means of corruption. The legislators of the Union acknowledged that the executive power would be incompetent to fulfill its task with dignity and utility, unless it enjoyed a greater degree of stability and of strength than had been granted it in the separate States.

The President is chosen for four years, and he may be re-elected ; so that the chances of a prolonged administration may inspire him with hopeful undertakings for the public good, and with the means of carrying them into execution. The President was made the sole representative of the executive power of the Union ; and care was taken not to render his decisions subordinate to the vote of a council,—a dangerous measure, which tends at the same time to clog the action of the Government and to diminish its responsibility. The Senate has the right of annulling certain acts of the President ; but it cannot compel him to take any steps, nor does it participate in the exercise of the executive power.

The action of the legislature on the executive power may be direct ; and we have just shown that the Americans carefully obviated this influence : but it may, on the other hand, be indirect. Public assemblies which have the power of depriving an

officer of state of his salary, encroach upon his independence ; and as they are free to make the laws, it is to be feared lest they should gradually appropriate to themselves a portion of that authority which the Constitution had vested in his hands. This dependence of the executive power is one of the defects inherent in republican constitutions. The Americans have not been able to counteract the tendency which legislative assemblies have to get possession of the government, but they have rendered this propensity less irresistible. The salary of the President is fixed, at the time of his entering upon office, for the whole period of his magistracy. The President is moreover provided with a suspensive veto, which allows him to oppose the passing of such laws as might destroy the portion of independence which the Constitution awards him. The struggle between the President and the legislature must always be an unequal one, since the latter is certain of bearing down all resistance by persevering in its plans ; but the suspensive veto forces it at least to reconsider the matter, and, if the motion be persisted in, it must then be backed by a majority of two thirds of the whole house. The veto is, in fact, a sort of appeal to the people. The executive power, which, without this security, might have been secretly oppressed, adopts this means of pleading its cause and stating its motives. But if the legislature is certain of overpowering all resistance by persevering in its plans, I reply, that in the con-

stitutions of all nations, of whatever kind they may be, a certain point exists at which the legislator is obliged to have recourse to the good sense and the virtue of his fellow-citizens. This point is more prominent and more discoverable in republics; whilst it is more remote and more carefully concealed in monarchies, but it always exists somewhere. There is no country in the world in which everything can be provided for by the laws, or in which political institutions can prove a substitute for common sense and public morality.

DIFFERENCES BETWEEN THE POSITION OF THE PRESIDENT OF THE UNITED STATES AND THAT OF A CONSTITUTIONAL KING OF FRANCE.

Executive power in the United States as limited and as partial as the supremacy which it represents.—Executive power in France as universal as the supremacy it represents.—The King a branch of the legislature.—The President the mere executor of the law.—Other differences resulting from the duration of the two powers.—The President checked in the exercise of the executive authority.—The King independent in its exercise.—Notwithstanding these discrepancies France is more akin to a republic than the Union to a monarchy.—Comparison of the number of public officers depending upon the executive power in the two countries.

THE executive power has so important an influence on the destinies of nations that I am inclined to pause for an instant at this portion of my subject,

in order more clearly to explain the part it sustains in America. In order to form an accurate idea of the position of the President of the United States, it may not be irrelevant to compare it to that of one of the constitutional kings of Europe. In this comparison I shall pay but little attention to the external signs of power, which are more apt to deceive the eye of the observer than to guide his researches. When a monarchy is being gradually transformed into a republic, the executive power retains the titles, the honours, the etiquette, and even the funds of royalty long after its authority has disappeared. The English, after having cut off the head of one king, and expelled another from his throne, were accustomed to accost the successor of those princes upon their knees. On the other hand, when a republic falls under the sway of a single individual, the demeanour of the sovereign is simple and unpretending, as if his authority was not yet paramount. When the emperors exercised an unlimited control over the fortunes and the lives of their fellow-citizens, it was customary to call them Cæsar in conversation, and they were in the habit of supping without formality at their friends' houses. It is therefore necessary to look below the surface.

The sovereignty of the United States is shared between the Union and the States, whilst in France it is undivided and compact: hence arises the first and the most notable difference which exists between the President of the United States and the

King of France. In the United States the executive power is as limited and partial as the sovereignty of the Union in whose name it acts ; in France it is as universal as the authority of the State. The Americans have a federal, and the French a national Government.

This first cause of inferiority results from the nature of things, but it is not the only one ; the second in importance is as follows: Sovereignty may be defined to be the right of making laws : in France, the King really exercises a portion of the sovereign power, since the laws have no weight till he has given his assent to them ; he is moreover the executor of all they ordain. The President is also the executor of the laws, but he does not really cooperate in their formation, since the refusal of his assent does not annul them. He is therefore merely to be considered as the agent of the sovereign power. But not only does the King of France exercise a portion of the sovereign power, he also contributes to the nomination of the legislature, which exercises the other portion. He has the privilege of appointing the members of one chamber, and of dissolving the other at his pleasure ; whereas the President of the United States has no share in the formation of the legislative body, and cannot dissolve any part of it. The King has the same right of bringing forward measures as the Chambers ; a right which the President does not possess. The King is represented in each assembly by his ministers, who explain his

intentions, support his opinions, and maintain the principles of the Government. The President and his ministers are alike excluded from Congress ; so that his influence and his opinions can only penetrate indirectly into that great body. The King of France is therefore on an equal footing with the legislature, which can no more act without him, than he can without it. The President exercises an authority inferior to, and depending upon, that of the legislature.

Even in the exercise of the executive power, properly so called,—the point upon which his position seems to be most analogous to that of the King of France,—the President labours under several causes of inferiority. The authority of the King, in France, has, in the first place, the advantage of duration over that of the President : and durability is one of the chief elements of strength ; nothing is either loved or feared but what is likely to endure. The President of the United States is a magistrate elected for four years. The King, in France, is an hereditary sovereign.

In the exercise of the executive power the President of the United States is constantly subject to a jealous scrutiny. He may make, but he cannot conclude, a treaty ; he may designate, but he cannot appoint, a public officer¹. The King of France is absolute in the sphere of the executive power.

¹ The Constitution has left it doubtful whether the President was obliged to consult the Senate in the removal as well as in the

The President of the United States is responsible for his actions ; but the person of the King is declared inviolable by the French Charter ;

Nevertheless, the supremacy of public opinion is no less above the head of the one than of the other. This power is less definite, less evident, and less sanctioned by the laws in France than in America, but in fact it exists. In America it acts by elections and decrees ; in France it proceeds by revolutions : but notwithstanding the different constitutions of these two countries, public opinion is the predominant authority in both of them. The fundamental principle of legislation—a principle essentially republican—is the same in both countries, although its consequences may be different, and its results more or less extensive. Whence I am led to conclude, that France with its King is nearer akin to a republic, than the Union with its President is to a monarchy.

In what I have been saying I have only touched upon the main points of distinction ; and if I could have entered into details, the contrast would have been rendered still more striking.

I have remarked that the authority of the President in the United States is only exercised within the limits of a partial sovereignty, whilst that of the appointment of Federal officers. The *Federalist* (No. 77.) seemed to establish the affirmative ; but in 1789 Congress formally decided that as the President was responsible for his actions, he ought not to be forced to employ agents who had forfeited his esteem." See Kent's Commentaries, vol. i. p. 289.

King, in France, is undivided. I might have gone on to show that the power of the King's government in France exceeds its natural limits, however extensive they may be, and penetrates in a thousand different ways into the administration of private interests. Amongst the examples of this influence may be quoted that which results from the great number of public functionaries, who all derive their appointments from the Government. This number now exceeds all previous limits ; it amounts to 138,000¹ nominations, each of which may be considered as an element of power. The President of the United States has not the exclusive right of making any public appointments, and their whole number scarcely exceeds 12,000².

ACCIDENTAL CAUSES WHICH MAY INCREASE THE INFLUENCE OF THE EXECUTIVE.

External security of the Union.—Army of six thousand men.—Few ships.—The President has no opportunity of exercising his great prerogatives.—In the prerogatives he exercises he is weak.

If the executive power is feebler in America than in France, the cause is more attributable to the circumstances than to the laws of the country.

¹ The sums annually paid by the State to these officers amount to 200,000,000 francs (eight millions sterling).

² This number is extracted from the 'National Calendar' for

It is chiefly in its foreign relations that the executive power of a nation is called upon to exert its skill and its vigour. If the existence of the Union were perpetually threatened, and if its chief interests were in daily connexion with those of other powerful nations, the executive government would assume an increased importance in proportion to the measures expected of it, and those which it would carry into effect. The President of the United States is the commander-in-chief of the army, but of an army composed of only six thousand men ; he commands the fleet, but the fleet reckons but few sail ; he conducts the foreign relations of the Union, but the United States are a nation without neighbours. Separated from the rest of the world by the Ocean, and too weak as yet to aim at the dominion of the seas, they have no enemies, and their interests rarely come into contact with those of any other nation of the globe.

The practical part of a Government must not be judged by the theory of its constitution. The President of the United States is in the possession of almost royal prerogatives, which he has no opportunity of exercising ; and those privileges which he can at present use are very circumscribed : the

1833. The National Calendar is an American Almanac which contains the names of all the Federal officers.

It results from this comparison that the King of France has eleven times as many places at his disposal as the President, although the population of France is not much more than double that of the Union.

laws allow him to possess a degree of influence which circumstances do not permit him to employ.

On the other hand, the great strength of the royal prerogative in France arises from circumstances far more than from the laws. There the executive government is constantly struggling against prodigious obstacles, and exerting all its energies to repress them ; so that it increases by the extent of its achievements, and by the importance of the events it controls, without for that reason modifying its constitution. If the laws had made it as feeble and as circumscribed as it is in the Union, its influence would very soon become much greater.

**WHY THE PRESIDENT OF THE UNITED STATES DOES
NOT REQUIRE THE MAJORITY OF THE TWO HOUSES
IN ORDER TO CARRY ON THE GOVERNMENT.**

IT is an established axiom in Europe that a constitutional King cannot persevere in a system of government which is opposed by the two other branches of the legislature. But several Presidents of the United States have been known to lose the majority in the legislative body, without being obliged to abandon the supreme power, and without inflicting a serious evil upon society. I have heard this fact quoted as an instance of the independence and the power of the executive government in America:

a moment's reflection will convince us, on the contrary, that it is a proof of its extreme weakness.

A King in Europe requires the support of the legislature to enable him to perform the duties imposed upon him by the Constitution, because those duties are enormous. A constitutional King in Europe is not merely the executor of the law, but the execution of its provisions devolves so completely upon him, that he has the power of paralyzing its influence if it opposes his designs. He requires the assistance of the legislative assemblies to make the law, but those assemblies stand in need of his aid to execute it: these two authorities cannot subsist without each other, and the mechanism of government is stopped as soon as they are at variance.

In America the President cannot prevent any law from being passed, nor can he evade the obligation of enforcing it. His sincere and zealous cooperation is no doubt useful, but it is not indispensable, in the carrying on of public affairs. All his important acts are directly or indirectly submitted to the legislature; and where he is independent of it he can do but little. It is therefore his weakness, and not his power, which enables him to remain in opposition to Congress. In Europe, harmony must reign between the Crown and the other branches of the legislature, because a collision between them may prove serious; in America, this harmony is not indispensable, because such a collision is impossible.

ELECTION OF THE PRESIDENT.

Dangers of the elective system increase in proportion to the extent of the prerogative.—This system possible in America because no powerful executive authority is required.—What circumstances are favourable to the elective system.—Why the election of the President does not cause a deviation from the principles of the Government.—Influence of the election of the President on secondary functionaries.

THE dangers of the system of election applied to the head of the executive government of a great people have been sufficiently exemplified by experience and by history ; and the remarks I am about to make refer to America alone. These dangers may be more or less formidable in proportion to the place which the executive power occupies, and to the importance it possesses in the State ; and they may vary according to the mode of election, and the circumstances in which the electors are placed. The most weighty argument against the election of a chief magistrate is, that it offers so splendid a lure to private ambition, and is so apt to inflame men in the pursuit of power, that when legitimate means are wanting, force may not unfrequently seize what right denies.

It is clear that the greater the privileges of the executive authority are, the greater is the temptation ; the more the ambition of the candidates is excited, the more warmly are their interests espoused by a throng of partisans who hope to share the

power when their patron has won the prize. The dangers of the elective system increase, therefore, in the exact ratio of the influence exercised by the executive power in the affairs of State. The revolutions of Poland are not solely attributable to the elective system in general, but to the fact that the elected magistrate was the head of a powerful monarchy. Before we can discuss the absolute advantages of the elective system, we must make preliminary inquiries as to whether the geographical position, the laws, the habits, the manners, and the opinions of the people amongst whom it is to be introduced, will admit of the establishment of a weak and dependent executive government; for to attempt to render the representative of the State a powerful sovereign, and at the same time elective, is, in my opinion, to entertain two incompatible designs. To reduce hereditary royalty to the condition of an elective authority, the only means that I am acquainted with are to circumscribe its sphere of action beforehand, gradually to diminish its prerogatives, and to accustom the people to live without its protection. Nothing, however, is further from the designs of the republicans of Europe than this course: as many of them only owe their hatred of tyranny to the sufferings which they have personally undergone, the extent of the executive power does not excite their hostility, and they only attack its origin without perceiving how nearly the two things are connected.

Hitherto no citizen has shown any disposition to expose his honour and his life in order to become the President of the United States ; because the power of that office is temporary, limited, and subordinate. The prize of fortune must be great to encourage adventurers in so desperate a game. No candidate has as yet been able to arouse the dangerous enthusiasm or the passionate sympathies of the people in his favour, for the very simple reason, that when he is at the head of the Government he has but little power, but little wealth, and but little glory to share amongst his friends ; and his influence in the State is too small for the success or the ruin of a faction to depend upon the elevation of an individual to power.

The great advantage of hereditary monarchies is, that as the private interest of a family is always intimately connected with the interests of the State, the executive government is never suspended for a single instant ; and if the affairs of a monarchy are not better conducted than those of a republic, at least there is always some one to conduct them, well or ill, according to his capacity. In elective States, on the contrary, the wheels of government cease to act, as it were of their own accord, at the approach of an election, and even for some time previous to that event. The laws may indeed accelerate the operation of the election, which may be conducted with such simplicity and rapidity that the seat of power will never be left vacant ; but, not-

withstanding these precautions, a break necessarily occurs in the minds of the people.

At the approach of an election the head of the executive government is wholly occupied by the coming struggle; his future plans are doubtful; he can undertake nothing new, and he will only prosecute with indifference those designs which another will perhaps terminate. "I am so near the time of my retirement from office," said President Jefferson on the 21st of January, 1809, (six weeks before the election,) "that I feel no passion, I take no part, I express no sentiment. It appears to me just to leave to my successor the commencement of those measures which he will have to prosecute, and for which he will be responsible."

On the other hand, the eyes of the nation are centred on a single point; all are watching the gradual birth of so important an event. The wider the influence of the executive power extends, the greater and the more necessary is its constant action, the more fatal is the term of suspense; and a nation which is accustomed to the government, or, still more, one used to the administrative protection of a powerful executive authority, would be infallibly convulsed by an election of this kind. In the United States the action of the Government may be slackened with impunity, because it is always weak and circumscribed.

One of the principal vices of the elective system is that it always introduces a certain degree of in-

stability into the internal and external policy of the State. But this disadvantage is less sensibly felt if the share of power vested in the elected magistrate is small. In Rome the principles of the Government underwent no variation, although the Consuls were changed every year, because the Senate, which was an hereditary assembly, possessed the directing authority. If the elective system were adopted in Europe, the condition of most of the monarchical States would be changed at every new election. In America the President exercises a certain influence on State affairs, but he does not conduct them; the preponderating power is vested in the representatives of the whole nation. The political maxims of the country depend therefore on the mass of the people, not on the President alone; and consequently in America the elective system has no very prejudicial influence on the fixed principles of the Government. But the want of fixed principles is an evil so inherent in the elective system, that it is still extremely perceptible in the narrow sphere to which the authority of the President extends.

The Americans have admitted that the head of the executive power, who has to bear the whole responsibility of the duties he is called upon to fulfill, ought to be empowered to choose his own agents, and to remove them at pleasure: the legislative bodies watch the conduct of the President more than they direct it. The consequence of this arrangement is, that at every new election the fate of all the

Federal public officers is in suspense. Mr. Quincy Adams, on his entry into office, discharged the majority of the individuals who had been appointed by his predecessor: and I am not aware that General Jackson allowed a single removeable functionary employed in the Federal service to retain his place beyond the first year which succeeded his election. It is sometimes made a subject of complaint, that in the constitutional monarchies of Europe the fate of the humbler servants of an Administration depends upon that of the ministers. But in elective governments this evil is far greater. In a constitutional monarchy successive ministries are rapidly formed; but as the principal representative of the executive power does not change, the spirit of innovation is kept within bounds; the changes which take place are in the details rather than in the principles of the administrative system: but to substitute one system for another, as is done in America every four years by law, is to cause a sort of revolution. As to the misfortunes which may fall upon individuals in consequence of this state of things, it must be allowed that the uncertain situation of the public officers is less fraught with evil consequences in America than elsewhere. It is so easy to acquire an independent position in the United States, that the public officer who loses his place may be deprived of the comforts of life, but not of the means of subsistence.

I remarked at the beginning of this chapter that

the dangers of the elective system applied to the head of the State, are augmented or decreased by the peculiar circumstances of the people which adopts it. However the functions of the executive power may be restricted, it must always exercise a great influence upon the foreign policy of the country, for a negotiation cannot be opened or successfully carried on otherwise than by a single agent. The more precarious and the more perilous the position of a people becomes, the more absolute is the want of a fixed and consistent external policy, and the more dangerous does the elective system of the chief magistrate become. The policy of the Americans in relation to the whole world is exceedingly simple ; and it may almost be said that no country stands in need of them, nor do they require the co-operation of any other people. Their independence is never threatened. In their present condition, therefore, the functions of the executive power are no less limited by circumstances than by the laws ; and the President may frequently change his line of policy without involving the State in difficulty or destruction.

Whatever the prerogatives of the executive power may be, the period which immediately precedes an election, and the moment of its duration, must always be considered as a national crisis which is perilous in proportion to the internal embarrassments and the external dangers of the country. Few of the nations of Europe could escape the ca-

lamities of anarchy or of conquest, every time they might have to elect a new sovereign. In America, society is so constituted that it can stand without assistance upon its own basis; nothing is to be feared from the pressure of external dangers; and the election of the President is a cause of agitation, but not of ruin.

MODE OF ELECTION.

Skill of the American legislators shown in the mode of election adopted by them.—Creation of a special electoral body.—Separate votes of these electors.—Case in which the House of Representatives is called upon to choose the President.—Results of the twelve elections which have taken place since the Constitution has been established.

BESIDES the dangers which are inherent in the system, many other difficulties may arise from the mode of election, which may be obviated by the precaution of the legislator. When a people met in arms on some public spot to choose its head, it was exposed to all the chances of civil war resulting from so martial a mode of proceeding, besides the dangers of the elective system in itself. The Polish laws, which subjected the election of the sovereign to the veto of a single individual, suggested the murder of that individual, or prepared the way to anarchy.

In the examination of the institutions, and the political as well as the social condition of the United

States, we are struck by the admirable harmony of the gifts of fortune and the efforts of man. That nation possessed two of the main causes of internal peace; it was a new country, but it was inhabited by a people grown old in the exercise of freedom. America had no hostile neighbours to dread; and the American legislators, profiting by these favourable circumstances, created a weak and subordinate executive power, which could without danger be made elective.

It then only remained for them to choose the least dangerous of the various modes of election; and the rules which they laid down upon this point admirably complete the securities which the physical and political constitution of the country already afforded. Their object was to find the mode of election which would best express the choice of the people with the least possible excitement and suspense. It was admitted in the first place that the *simple* majority should be decisive; but the difficulty was to obtain this majority without an interval of delay which it was most important to avoid. It rarely happens that an individual can at once collect the majority of the suffrages of a great people; and this difficulty is enhanced in a republic of confederate States, where local influences are apt to preponderate. The means by which it was proposed to obviate this second obstacle was to delegate the electoral powers of the nation to a body of representatives. This mode of election rendered

a majority more probable ; for the fewer the electors are, the greater is the chance of their coming to a final decision. It also offered an additional probability of a judicious choice. It then remained to be decided whether this right of election was to be entrusted to the legislative body, the habitual representative assembly of the nation, or whether an electoral assembly should be formed for the express purpose of proceeding to the nomination of a President. The Americans chose the latter alternative, from a belief that the individuals who were returned to make the laws were incompetent to represent the wishes of the nation in the election of its chief magistrate ; and that as they are chosen for more than a year, the constituency they represented might have changed its opinion in that time. It was thought that if the legislature was empowered to elect the head of the executive power, its members would, for some time before the election, be exposed to the manœuvres of corruption and the tricks of intrigue ; whereas the special electors would, like a jury, remain mixed up with the crowd till the day of action, when they would appear for the sole purpose of giving their votes.

It was therefore established that every State should name a certain number of electors¹, who in their turn should elect the President ; and as it had

¹ As many as it sends members to Congress. The number of electors at the election of 1833 was 288. (See The National Calendar, 1833.)

been observed that the assemblies to which the choice of a chief magistrate had been entrusted in elective countries, inevitably became the centres of passion and of cabal ; that they sometimes usurped an authority which did not belong to them ; and that their proceedings, or the uncertainty which resulted from them, were sometimes prolonged so much as to endanger the welfare of the State, it was determined that the electors should all vote upon the same day, without being convoked to the same place¹. This double election rendered a majority probable, though not certain ; for it was possible that as many differences might exist between the electors as between their constituents. In this case it was necessary to have recourse to one of three measures ; either to appoint new electors, or to consult a second time those already appointed, or to defer the election to another authority. The first two of these alternatives, independently of the uncertainty of their results, were likely to delay the final decision, and to perpetuate an agitation which must always be accompanied with danger. The third expedient was therefore adopted, and it was agreed that the votes should be transmitted sealed to the President of the Senate, and that they should be opened and counted in the presence of the Senate and the House of Representatives. If none

¹ The electors of the same State assemble, but they transmit to the central Government the list of their individual votes, and not the mere result of the vote of the majority.

of the candidates has a majority, the House of Representatives then proceeds immediately to elect the President ; but with the condition that it must fix upon one of the three candidates who have the highest numbers¹.

Thus it is only in case of an event which cannot often happen, and which can never be foreseen, that the election is entrusted to the ordinary representatives of the nation ; and even then they are obliged to choose a citizen who has already been designated by a powerful minority of the special electors. It is by this happy expedient that the respect which is due to the popular voice is combined with the utmost celerity of execution and those precautions which the peace of the country demands. But the decision of the question by the House of Representatives does not necessarily offer an immediate solution of the difficulty, for the majority of that assembly may still be doubtful, and in this case the Constitution prescribes no remedy, Nevertheless, by restricting the number of candidates to three, and by referring the matter to the

¹ In this case it is the majority of the States, and not the majority of the members, which decides the question ; so that New York has not more influence in the debate than Rhode Island. Thus the citizens of the Union are first consulted as members of one and the same community ; and, if they cannot agree, recourse is had to the division of the States, each of which has a separate and independent vote. This is one of the singularities of the Federal Constitution which can only be explained by the jar of conflicting interests.

judgement of an enlightened public body, it has smoothed all the obstacles¹ which are not inherent in the elective system.

In the forty-four years which have elapsed since the promulgation of the Federal Constitution, the United States have twelve times chosen a President. Ten of these elections took place simultaneously by the votes of the special electors in the different States. The House of Representatives has only twice exercised its conditional privilege of deciding in cases of uncertainty: the first time was at the election of Mr. Jefferson in 1801; the second was in 1825, when Mr. Quincy Adams was named.

CRISIS OF THE ELECTION.

The Election may be considered as a national crisis.—Why?—Passions of the people.—Anxiety of the President.—Calm which succeeds the agitation of the election.

I HAVE shown what the circumstances are which favoured the adoption of the elective system in the United States, and what precautions were taken by the legislators to obviate its dangers. The Americans are accustomed to all kinds of elections; and they know by experience the utmost degree of

¹ Jefferson, in 1801, was not elected until the 36th time of balloting.

excitement which is compatible with security. The vast extent of the country and the dissemination of the inhabitants render a collision between parties less probable and less dangerous there than elsewhere. The political circumstances under which the elections have hitherto been carried on have presented no real embarrassments to the nation.

Nevertheless, the epoch of the election of a President of the United States may be considered as a crisis in the affairs of the nation. The influence which he exercises on public business is no doubt feeble and indirect; but the choice of the President, which is of small importance to each individual citizen, concerns the citizens collectively; and however trifling an interest may be, it assumes a great degree of importance as soon as it becomes general. The President possesses but few means of rewarding his supporters in comparison to the kings of Europe, but the places which are at his disposal are sufficiently numerous to interest, directly or indirectly, several thousand electors in his success. Moreover political parties, in the United States as well as elsewhere, are led to rally round an individual, in order to acquire a more tangible shape in the eyes of the crowd, and the name of the candidate for the Presidency is put forward as the symbol and personification of their theories. For these reasons parties are strongly interested in gaining the election, not so much with a view to the triumph of their principles under the auspices

of the President elected, as to show, by the majority which returned him, the strength of the supporters of those principles.

For a long while before the appointed time is at hand, the election becomes the most important and the all-engrossing topic of discussion. The ardour of faction is redoubled ; and all the artificial passions which the imagination can create in the bosom of a happy and peaceful land are agitated and brought to light. The President, on the other hand, is absorbed by the cares of self-defence. He no longer governs for the interest of the State, but for that of his re-election ; he does homage to the majority, and instead of checking its passions, as his duty commands him to do, he frequently courts its worst caprices. As the election draws near, the activity of intrigue and the agitation of the populace increase ; the citizens are divided into several camps, each of which assumes the name of its favourite candidate ; the whole nation glows with feverish excitement ; the election is the daily theme of the public papers, the subject of private conversation, the end of every thought and every action, the sole interest of the present. As soon as the choice is determined, this ardour is dispelled ; and as a calmer season returns, the current of the State, which had nearly broken its banks, sinks to its usual level : but who can refrain from astonishment at the causes of the storm ?

RE-ELECTION OF THE PRESIDENT.

head of the executive power is re-eligible, it is the State the source of intrigue and corruption.—The desire of being re-elected the chief aim of a President of the United States.—Disadvantage of the system peculiar to America.—The natural evil of democracy is that it subordinates all authority to the slightest desires of the majority.—The re-election of the President encourages this evil.

It may be asked whether the legislators of the United States did right or wrong in allowing the re-election of the President. It seems at first sight contrary to all reason to prevent the head of the executive power from being elected a second time. The influence which the talents and the character of a single individual may exercise upon the fate of a whole people, especially in critical circumstances or arduous times, is well known : a law preventing the re-election of the chief magistrate would deprive the citizens of the surest pledge of the prosperity and the security of the commonwealth ; and, by a singular inconsistency, a man would be excluded from the government at the very time when he had shown his ability in conducting its affairs.

But if these arguments are strong, perhaps still more powerful reasons may be advanced against them. Intrigue and corruption are the natural defects of elective government ; but when the head of the State can be re-elected, these evils rise to a great height, and compromise the very existence

of the country. When a simple candidate seeks to rise by intrigue, his manœuvres must necessarily be limited to a narrow sphere ; but when the chief magistrate enters the lists, he borrows the strength of the Government for his own purposes. In the former case the feeble resources of an individual are in action ; in the latter, the State itself, with all its immense influence, is busied in the work of corruption and cabal. The private citizen, who employs the most immoral practices to acquire power, can only act in a manner indirectly prejudicial to the public prosperity. But if the representative of the executive descends into the lists, the cares of government dwindle into second-rate importance, and the success of his election is his first concern. All laws and negotiations are then to him nothing more than electioneering schemes ; places become the reward of services rendered, not to the nation, but to its chief ; and the influence of the Government, if not injurious to the country, is at least no longer beneficial to the community for which it was created.

It is impossible to consider the ordinary course of affairs in the United States without perceiving that the desire of being re-elected is the chief aim of the President ; that his whole administration, and even his most indifferent measures, tend to this object ; and that, as the crisis approaches, his personal interest takes the place of his interest in the public good. The principle of re-eligibility renders

the corrupt influence of elective governments still more extensive and pernicious. It tends to degrade the political morality of the people, and to substitute adroitness for patriotism.

In America it exercises a still more fatal influence on the sources of national existence. Every government seems to be afflicted by some evil inherent in its nature, and the genius of the legislator is shown in eluding its attacks. A State may survive the influence of a host of bad laws, and the mischief they cause is frequently exaggerated; but a law which encourages the growth of the canker within must prove fatal in the end, although its bad consequences may not be immediately perceived.

The principle of destruction in absolute monarchies lies in the excessive and unreasonable extension of the prerogative of the Crown; and a measure tending to remove the constitutional provisions which counterbalance this influence would be radically bad, even if its consequences should long appear to be imperceptible. By a parity of reasoning, in countries governed by a democracy, where the people is perpetually drawing all authority to itself, the laws which increase or accelerate its action are the direct assailants of the very principle of the Government.

The greatest proof of the ability of the American legislators is, that they clearly discerned this truth, and that they had the courage to act up to it. They conceived that a certain authority above the body of the people was necessary, which should enjoy a degree of independence, without however being

entirely beyond the popular control ; an authority which would be forced to comply with the *permanent* determinations of the majority, but which would be able to resist its caprices, and to refuse its most dangerous demands. To this end they centred the whole executive power of the nation in a single arm ; they granted extensive prerogatives to the President, and they armed him with the veto to resist the encroachments of the legislature.

But by introducing the principle of re-election they partly destroyed their work ; and they rendered the President but little inclined to exert the great power they had vested in his hands. If ineligible a second time, the President would be far from independent of the people, for his responsibility would not be lessened ; but the favour of the people would not be so necessary to him as to induce him to court it by humouring its desires. , If re-eligible, (and this is more especially true at the present day, when political morality is relaxed, and when great men are rare,) the President of the United States becomes an easy tool in the hands of the majority. He adopts its likings and its animosities, he hastens to anticipate its wishes, he forestalls its complaints, he yields to its idlest cravings, and instead of guiding it, as the legislature intended that he should do, he is ever ready to follow its bidding. Thus, in order not to deprive the State of the talents of an individual, those talents have been rendered almost useless ; and to reserve an expedient for extraordinary perils the country has been exposed to daily dangers.

FEDERAL COURTS¹.

Political importance of the judiciary in the United States.—
 Difficulty of treating this subject.—Utility of judicial power in
 confederations.—What tribunals could be introduced into the
 Union.—Necessity of establishing federal courts of justice.—
 Organization of the national judiciary.—The Supreme Court.—
 In what it differs from all known tribunals.

I HAVE inquired into the legislative and executive power of the Union, and the judicial power now remains to be examined; but in this place I cannot conceal my fears from the reader. Judicial institutions exercise a great influence on the condition of the Anglo-Americans, and they occupy a prominent place amongst what are properly called political institutions: in this respect they are peculiarly deserving of our attention. But I am at loss to explain the political action of the American tribunals without entering into some technical details on their Constitution and their forms of proceeding; and I know not how to descend to these minutiae without wearying the curiosity of the reader

¹ See Chapter VI., entitled 'Judicial Power in the United States.' This chapter explains the general principles of the American theory of judicial institutions. See also 'The Federal Constitution, Art. 3. See The Federalist, Nos. 78—83, inclusive; and a work entitled 'Constitutional Law, being a View of the Practice and Jurisdiction of the Courts of the United States, by Thomas Sergeant.' See Story, pp. 134, 162, 489, 511, 581, 668; and the organic law of the 24th September, 1789, in the Collection of the Laws of the United States, by Story, vol. i. p. 53.

by the natural aridity of the subject, or without risking to fall into obscurity through a desire to be succinct. I can scarcely hope to escape these various evils ; for if I appear too lengthy to a man of the world, a lawyer may on the other hand complain of my brevity. But these are the natural disadvantages of my subject, and more especially of the point which I am about to discuss. •

The great difficulty was, not to devise the Constitution of the Federal Government, but to find out a method of enforcing its laws. Governments have in general but two means of overcoming the opposition of the people they govern, viz. the physical force which is at their own disposal, and the moral force which they derive from the decisions of the courts of justice.

A government which should have no other means of exacting obedience than open war, must be very near its ruin ; for one of two alternatives would then probably occur : if its authority was small, and its character temperate, it would not resort to violence till the last extremity, and it would connive at a number of partial acts of insubordination, in which case the State would gradually fall into anarchy ; if it was enterprising and powerful, it would perpetually have recourse to its physical strength, and would speedily degenerate into a military despotism. So that its activity would not be less prejudicial to the community than its inaction.

The great end of justice is to substitute the notion

of right for that of violence ; and to place a legal barrier between the power of the Government and the use of physical force. The authority which is awarded to the intervention of a court of justice by the general opinion of mankind is so surprisingly great, that it clings to the mere formalities of justice, and gives a bodily influence to the shadow of the law. The moral force which courts of justice possess renders the introduction of physical force exceedingly rare, and is very frequently substituted for it ; but if the latter proves to be indispensable, its power is doubled by the association of the idea of law.

A Federal Government stands in greater need of the support of judicial institutions than any other, because it is naturally weak, and exposed to formidable opposition¹. If it were always obliged to resort to violence in the first instance, it could not fulfill its task. The Union, therefore, required a national judiciary to enforce the obedience of the citizens to the laws, and to repel the attacks which might be directed against them. The question then remained as to what tribunals were to exercise these privileges ; were they to be entrusted to the courts

¹ Federal laws are those which most require courts of justice, and those at the same time which have most rarely established them. The reason is that confederations have usually been formed by independent States, which entertained no real intention of obeying the central Government, and which very readily ceded the right of command to the Federal executive, and very prudently reserved the right of non-compliance to themselves.

of justice which were already organized in every State? or was it necessary to create federal courts? It may easily be proved that the Union could not adapt the judicial power of the States to its wants. The separation of the judiciary from the administrative power of the State no doubt affects the security of every citizen, and the liberty of all. But it is no less important to the existence of the nation that these several powers should have the same origin, should follow the same principles, and act in the same sphere; in a word, that they should be correlative and homogeneous. No one, I presume, ever suggested the advantage of trying offences committed in France, by a foreign court of justice, in order to ensure the impartiality of the judges. The Americans form one people in relation to their Federal Government; but in the bosom of this people divers political bodies have been allowed to subsist which are dependent on the national Government in a few points, and independent in all the rest—which have all a distinct origin, maxims peculiar to themselves, and special means of carrying on their affairs. To entrust the execution of the laws of the Union to tribunals instituted by these political bodies, would be to allow foreign judges to preside over the nation. Nay more, not only is each State foreign to the Union at large, but it is in perpetual opposition to the common interests, since whatever authority the Union loses turns to the advantage of the States. Thus to enforce the

laws of the Union by means of the tribunals of the States, would be to allow not only foreign, but partial judges to preside over the nation.

But the number, still more than the mere character, of the tribunals of the States rendered them unfit for the service of the nation. When the Federal Constitution was formed, there were already thirteen courts of justice in the United States which decided causes without appeal. That number is now increased to twenty-four. To suppose that a State can subsist, when its fundamental laws may be subjected to four-and-twenty different interpretations at the same time, is to advance a proposition alike contrary to reason and to experience.

The American legislators therefore agreed to create a federal judiciary power to apply the laws of the Union, and to determine certain questions affecting general interests, which were carefully determined beforehand. The entire judicial power of the Union was centred in one tribunal, which was denominated the Supreme Court of the United States. But, to facilitate the expedition of business, inferior courts were appended to it, which were empowered to decide causes of small importance without appeal, and with appeal causes of more magnitude. The members of the Supreme Court are named neither by the people nor the legislature, but by the President of the United States, acting with the advice of the Senate. In order to render them independent of the other authorities,

their office was made inalienable ; and it was determined that their salary, when once fixed, should not be altered by the legislature¹. It was easy to proclaim the principle of a Federal judiciary, but difficulties multiplied when the extent of its jurisdiction was to be determined.

MEANS OF DETERMINING THE JURISDICTION OF THE FEDERAL COURTS.

Difficulty of determining the jurisdiction of separate courts of justice in confederations.—The courts of the Union obtained the right of fixing their own jurisdiction.—In what respect this rule attacks the portion of sovereignty reserved to the several States.—The sovereignty of these States restricted by the laws, and the interpretation of the laws.—Consequently, the danger of the several States is more apparent than real.

As the Constitution of the United States recognised two distinct powers, in presence of each other, represented in a judicial point of view by two distinct classes of courts of justice, the utmost

¹ The Union was divided into districts, in each of which a resident Federal judge was appointed, and the court in which he presided was termed a 'District Court'. Each of the judges of the Supreme Court annually visits a certain portion of the Republic, in order to try the most important causes upon the spot : the court presided over by this magistrate is styled a 'Circuit Court'. Lastly, all the most serious cases of litigation are brought before the Supreme Court, which holds a solemn session once a year, at which all the judges of the Circuit courts must attend. The

care which could be taken in defining their separate jurisdictions would have been insufficient to prevent frequent collisions between those tribunals. The question then arose, to whom the right of deciding the competency of each court was to be referred.

In nations which constitute a single body politic, when a question is debated between two courts relating to their mutual jurisdiction, a third tribunal is generally within reach to decide the difference; and this is effected without difficulty, because in these nations the questions of judicial competency have no connexion with the privileges of the national supremacy. But it was impossible to create an arbiter between a superior court of the Union and the superior court of a separate State which would not belong to one of these two classes. It was therefore necessary to allow one of these courts to judge its own cause, and to take or to retain cognizance of the point which was contested. To grant this privilege to the different courts of the States,

Jury was introduced into the Federal courts in the same manner, and in the same cases, as into the courts of the States.

It will be observed that no analogy exists between the Supreme Court of the United States and the French *Cour de Cassation*, since the latter only hears appeals. The Supreme Court decides upon the evidence of the fact, as well as upon the law of the case, whereas the *Cour de Cassation* does not pronounce a decision of its own, but refers the cause to the arbitration of another tribunal.—See the law of the 24th September, 1789, *Laws of the United States*, by Story, vol. i. p. 53.

would have been to destroy the sovereignty of the Union *de facto*, after having established it *de jure*; for the interpretation of the Constitution would soon have restored that portion of independence to the States of which the terms of that act deprived them. The object of the creation of a Federal tribunal was to prevent the courts of the States from deciding questions affecting the national interests in their own department, and so to form a uniform body of jurisprudence for the interpretation of the laws of the Union. This end would not have been accomplished if the courts of the several States had been competent to decide upon cases in their separate capacities, from which they were obliged to abstain as Federal tribunals. The Supreme Court of the United States was therefore invested with the right of determining all questions of jurisdiction¹.

— This was a severe blow upon the independence of the States, which was thus restricted not only by the laws, but by the interpretation of them; by one limit which was known, and by another which was

¹ In order to diminish the number of these suits, it was decided that in a great many Federal causes the courts of the States should be empowered to decide conjointly with those of the Union, the losing party having then a right of appeal to the Supreme Court of the United States. The Supreme Court of Virginia contested the right of the Supreme Court of the United States to judge an appeal from its decisions, but unsuccessfully. See Kent's Commentaries, vol. i. p. 300, p. 370, *et seq.*; Story's Commentaries, p. 646; and The Organic Law of the United States, vol. i. p. 35.

dubious ; by a rule which was certain, and a rule which was arbitrary. It is true the Constitution had laid down the precise limits of the Federal supremacy, but whenever this supremacy is contested by one of the States, a Federal tribunal decides the question. Nevertheless, the dangers with which the independence of the States was threatened by this mode of proceeding are less serious than they appeared to be. We shall see hereafter that in America the real strength of the country is vested in the provincial far more than in the Federal Government. The Federal judges are conscious of the relative weakness of the power in whose name they act, and they are more inclined to abandon a right of jurisdiction in cases where it is justly their own, than to assert a privilege to which they have no legal claim.

DIFFERENT CASES OF JURISDICTION. . .

The matter and the party are the first conditions of the Federal jurisdiction.—Suits in which ambassadors are engaged.—Suits of the Union.—Of a separate State.—By whom tried.—Causes resulting from the laws of the Union.—Why judged by the Federal tribunals.—Causes relating to the non-performance of contracts tried by the Federal courts.—Consequences of this arrangement.

AFTER having appointed the means of fixing the competency of the Federal courts, the legislators of the Union defined the cases which should come with-

in their jurisdiction. It was established, on the one hand, that certain parties must always be brought before the Federal courts, without any regard to the special nature of the cause ; and, on the other, that certain causes must always be brought before the same courts, without any regard to the quality of the parties in the suit. These distinctions were, therefore admitted to be the bases of the Federal jurisdiction.

Ambassadors are the representatives of nations in a state of amity with the Union, and whatever concerns these personages concerns in some degree the whole Union. When an ambassador is a party in a suit, that suit affects the welfare of the nation, and a Federal tribunal is naturally called upon to decide it.

The Union itself may be involved in legal proceedings, and in this case it would be alike contrary to the customs of all nations, and to common sense, to appeal to a tribunal representing any other sovereignty than its own ; the Federal courts, therefore, take cognizance of these affairs.

When two parties belonging to two different States are engaged in a suit, the case cannot with propriety be brought before a court of either State. The surest expedient is to select a tribunal like that of the Union, which can excite the suspicions of neither party, and which offers the most natural as well as the most certain remedy.

When the two parties are not private individuals,

but States, an important political consideration is added to the same motive of equity. The quality of the parties, in this case, gives a national importance to all their disputes; and the most trifling litigation of the States may be said to involve the peace of the whole Union¹.

The nature of the cause frequently prescribes the rule of competency. Thus all the questions which concern maritime commerce evidently fall under the cognizance of the Federal tribunals². Almost all these questions are connected with the interpretation of the law of nations; and in this respect they essentially interest the Union in relation to foreign powers. Moreover, as the sea is not included within the limits of any peculiar jurisdiction, the national courts can only hear causes which originate in maritime affairs.

The Constitution comprises under one head almost all the cases which by their very nature come

¹ The Constitution also says that the Federal courts shall decide "controversies between a State and the citizens of another State." And here a most important question of a constitutional nature arose, which was, whether the jurisdiction given by the Constitution in cases in which a State is a party, extended to suits brought *against* a State as well as *by* it, or was exclusively confined to the latter. The question was most elaborately considered in the case of *Chisholme v. Georgia*, and was decided by the majority of the Supreme Court in the affirmative. The decision created general alarm among the States, and an amendment was proposed and ratified by which the power was entirely taken away so far as it regards suits brought *against* a State. See Story's Commentaries, p. 624, or in the large edition § 1677.

² As, for instance, all cases of piracy.

within the limits of the Federal courts. The rule which it lays down is simple, but pregnant with an entire system of ideas, and with a vast multitude of facts. It declares that the judicial power of the Supreme Court shall extend to all cases in law and equity *arising under the laws of the United States*.

Two examples will put the intention of the legislator in the clearest light :

The Constitution prohibits the States from making laws on the value and circulation of money : If, notwithstanding this prohibition, a State passes a law of this kind, with which the interested parties refuse to comply because it is contrary to the Constitution, the case must come before a Federal court, because it arises under the laws of the United States. Again, if difficulties arise in the levying of import duties which have been voted by Congress, the Federal Court must decide the case, because it arises under the interpretation of a law of the United States.

This rule is in perfect accordance with the fundamental principles of the Federal Constitution. The Union, as it was established in 1789, possesses, it is true, a limited supremacy ; but it was intended that within its limits it should form one and the same people¹. Within those limits the Union is

¹ This principle was in some measure restricted by the introduction of the several States as independent powers into the Senate, and by allowing them to vote separately in the House of Representatives when the President is elected by that body. But these are exceptions, and the contrary principle is the rule.

sovereign. When this point is established and admitted, the inference is easy ; for if it be acknowledged that the United States constitute one and the same people within the bounds prescribed by their Constitution, it is impossible to refuse them the rights which belong to other nations. But it has been allowed, from the origin of society, that every nation has the right of deciding by its own courts those questions which concern the execution of its own laws. To this it is answered, that the Union is in so singular a position, that in relation to some matters it constitutes a people, and that in relation to all the rest it is, a nonentity. But the inference to be drawn is, that in the laws relating to these matters the Union possesses all the rights of absolute sovereignty. The difficulty is to know what these matters are ; and when once it is resolved, (and we have shown how it was resolved, in speaking of the means of determining the jurisdiction of the Federal courts,) no further doubt can arise ; for as soon as it is established that a suit is Federal, that is to say, that it belongs to the share of sovereignty reserved by the Constitution to the Union, the natural consequence is that it should come within the jurisdiction of a Federal court.

Whenever the laws of the United States are attacked, or whenever they are resorted to in self-defence, the Federal courts must be appealed to. Thus the jurisdiction of the tribunals of the Union extends and narrows its limits exactly in the same

ratio as the sovereignty of the Union augments or decreases. We have shown that the principal aim of the legislators of 1789 was to divide the sovereign authority into two parts. In the one they placed the control of all the general interests of the Union, in the other the control of the special interests of its component States. Their chief solicitude was to arm the Federal Government with sufficient power to enable it to resist, within its sphere, the encroachments of the several States. As for these communities, the principle of independence within certain limits of their own was adopted in their behalf; and they were concealed from the inspection, and protected from the control, of the central Government. In speaking of the division of authority, I observed that this latter principle had not always been held sacred, since the States are prevented from passing certain laws, which apparently belong to their own particular sphere of interest. When a State of the Union passes a law of this kind, the citizens who are injured by its execution can appeal to the Federal courts.

Thus the jurisdiction of the Federal courts extends not only to all the cases which arise under the laws of the Union, but also to those which arise under laws made by the several States in opposition to the Constitution. The States are prohibited from making *ex-post-facto* laws in criminal cases; and any person condemned by virtue of a law of this kind can appeal to the judicial power of

the Union. The States are likewise prohibited from making laws which may have a tendency to impair the obligations of contracts¹. If a citizen thinks that an obligation of this kind is impaired by a law passed in his State, he may refuse to obey it, and may appeal to the Federal courts². . . .

¹ It is perfectly clear, says Mr. Story (Commentaries, p. 503, or in the large edition § 1379), that any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. He gives in the same place a very long and careful definition of what is understood by a contract in Federal jurisprudence. A grant made by the State to a private individual, and accepted by him, is a contract, and cannot be revoked by any future law. A charter granted by the State to a company is a contract, and equally binding to the State as to the grantee. The clause of the Constitution here referred to insures, therefore, the existence of a great part of acquired rights, but not of all. Property may legally be held, though it may not have passed into the possessor's hands by means of a contract; and its possession is an acquired right, not guaranteed by the Federal Constitution.

² A remarkable instance of this is given by Mr. Story (p. 508, or in the large edition § 1388). "Dartmouth College in New Hampshire had been founded by a charter granted to certain individuals before the American Revolution, and its trustees formed a corporation under this charter. The legislature of New Hampshire had, without the consent of this corporation, passed an act changing the organization of the original provincial charter of the college, and transferring all the rights, privileges, and franchises from the old charter trustees to new trustees appointed under the act. The constitutionality of the act was contested, and, after solemn arguments, it was deliberately held by the Supreme Court that the provincial charter was a contract within the meaning of the Constitution (Art. I. sect. 10.), and that the amendatory act was utterly void, as impairing the obligation of that charter. The college was deemed, like other colleges of private foundation, to

This provision appears to me to be the most serious attack upon the independence of the States. The rights awarded to the Federal Government for purposes of obvious national importance are definite and easily comprehensible: but those with which this last clause invests it are not either clearly appreciable or accurately defined. For there are vast numbers of political laws which influence the existence of obligations of contracts, which may thus furnish an easy pretext for the aggressions of the central authority.

be a private eleemosynary institution, endowed by its charter with a capacity to take property unconnected with the Government. Its funds were bestowed upon the faith of the charter, and those funds consisted entirely of private donations. It is true that the uses were in some sense public, that is, for the general benefit, and not for the mere benefit of the corporators; but this did not make the corporation a public corporation. It was a private institution for general charity. It was not distinguishable in principle from a private donation, vested in private trustees, for a public charity, or for a particular purpose of beneficence. And the State itself, if it had bestowed funds upon a charity of the same nature, could not resume those funds."

[I have been induced somewhat to extend the mention of this case made by the author, because this precedent, whilst it explains an important clause in the American Constitution, offers a curious if not a weighty opinion on the important question of private grants and foundations as contrasted with what has been termed the national property,—a question which may prove the most dangerous, as it is now one of the most serious, agitated in England.—*Translator's Note.*]

PROCEDURE OF THE FEDERAL COURTS.

Natural weakness of the judiciary power in confederations.—Legislators ought to strive as much as possible to bring private individuals, and not States, before the Federal Courts.—How the Americans have succeeded in this.—Direct prosecution of private individuals in the Federal Courts.—Indirect prosecution of the States which violate the laws of the Union.—The decrees of the Supreme Court enervate but do not destroy the provincial laws.

I HAVE shown what the privileges of the Federal courts are, and it is no less important to point out the manner in which they are exercised. The irresistible authority of justice in countries in which the sovereignty is undivided, is derived from the fact, that the tribunals of those countries represent the entire nation at issue with the individual against whom their decree is directed; and the idea of power is thus introduced to corroborate the idea of right. But this is not always the case in countries in which the sovereignty is divided; in them the judicial power is more frequently opposed to a fraction of the nation than to an isolated individual, and its moral authority and physical strength are consequently diminished. In Federal States the power of the judge is naturally decreased, and that of the justiciable parties is augmented. The aim of the legislator in confederate States ought therefore to be, to render the position of the courts of justice analogous to that which they occupy in countries

where the sovereignty is undivided ; in other words his efforts ought constantly to tend to maintain the judicial power of the confederation as the representative of the nation, and the justiciable party as the representative of an individual interest.

• Every Government, whatever may be its constitution, requires the means of constraining its subjects to discharge their obligations, and of protecting its privileges from their assaults. As far as the direct action of the government on the community is concerned, the Constitution of the United States contrived, by a master-stroke of policy, that the Federal Courts, acting in the name of the laws, should only take cognizance of parties in an individual capacity. For, as it had been declared that the Union consisted of one and the same people within the limits laid down by the Constitution, the inference was that the Government created by this Constitution, and acting within these limits, was invested with all the privileges of a national Government, one of the principal of which is the right of transmitting its injunctions directly to the private citizen. When, for instance, the Union votes an impost, it does not apply to the States for the levying of it, but to every American citizen, in proportion to his assessment. The Supreme Court, which is empowered to enforce the execution of this law of the Union, exerts its influence not upon a refractory State, but upon the private tax-payer ; and, like the judicial power of other nations, it is

opposed to the person of an individual. It is to be observed that the Union chose its own antagonist ; and as that antagonist is feeble, he is naturally worsted.

But the difficulty increases when the proceedings are not brought forward *by* but *against* the Union. The Constitution recognises the legislative power of the States ; and a law so enacted may impair the privileges of the Union, in which case a collision is unavoidable between that body and the State which has passed the law : and it only remains to select the least dangerous remedy, which is very clearly deducible from the general principles I have before established'.

It may be conceived that, in the case under consideration, the Union might have sued the State before a Federal court, which would have annulled the act ; and by this means it would have adopted a natural course of proceeding : but the judicial power would have been placed in open hostility to the State, and it was desirable to avoid this predicament as much as possible. The Americans hold that it is nearly impossible that a new law should not impair the interests of some private individual by its provisions : these private interests are assumed by the American legislators as the ground of attack against such measures as may be prejudicial to the Union, and it is to these cases that the protection of the Supreme Court is extended.

See Chapter VI. on Judicial Power in America.

Suppose a State vends a certain portion of its territory to a company, and that a year afterwards it passes a law by which the territory is otherwise disposed of, and that clause of the Constitution, which prohibits laws impairing the obligation of contracts, violated. When the purchaser under the second act appears to take possession, the possessor under the first act brings his action before the tribunals of the Union, and causes the title of the claimant to be pronounced null and void¹. Thus, in point of fact, the judicial power of the Union is contesting the claims of the sovereignty of a State ; but it only acts indirectly and upon a special application of detail : it attacks the law in its consequences, not in its principle, and it rather weakens than destroys it.

The last hypothesis that remained was that each State formed a corporation enjoying a separate existence and distinct civil rights, and that it could therefore sue or be sued before a tribunal. Thus a State could bring an action against another State. In this instance the Union was not called upon to contest a provincial law, but to try a suit in which a State was a party. This suit was perfectly similar to any other cause, except that the quality of the parties was different ; and here the danger pointed out at the beginning of this chapter exists with less chance of being avoided. The inherent disadvantage of the very essence of Federal constitutions is

¹ See Kent's Commentaries, vol. i. p. 387.

that they engender parties in the bosom of the nation which present powerful obstacles to the free course of justice.

•HIGH RANK OF THE SUPREME COURTS AMONGST THE
GREAT POWERS OF STATE.

No nation ever constituted so great a judicial power as the Americans.—Extent of its prerogative.—Its political influence.—The tranquillity and the very existence of the Union depend on the discretion of the seven Federal Judges.

WHEN we have successively examined in detail the organization of the Supreme Court, and the entire prerogatives which it exercises, we shall readily admit that a more imposing judicial power was never constituted by any people. The Supreme Court is placed at the head of all known tribunals, both by the nature of its rights and the class of justiciable parties which it controls. ••

In all the civilized countries of Europe, the Government has always shown the greatest repugnance to allow the cases to which it was itself a party to be decided by the ordinary course of justice. This repugnance naturally attains its utmost height in an absolute Government ; and, on the other hand, the privileges of the courts of justice are extended with the increasing liberties of the people : but no European nation has at present held that all judicial

controversies, without regard to their origin, can be decided by the judges of common law.

In America this theory has been actually put in practice; and the Supreme Court of the United States is the sole tribunal of the nation. Its power extends to all the cases arising under laws and treaties made by the executive and legislative authorities, to all cases of admiralty and maritime jurisdiction, and in general to all points which affect the law of nations. It may even be affirmed that, although its constitution is essentially judicial, its prerogatives are almost entirely political. Its sole object is to enforce the execution of the laws of the Union; and the Union only regulates the relations of the Government with the citizens, and of the nation with Foreign Powers: the relations of citizens amongst themselves are almost exclusively regulated by the sovereignty of the States.

A second and still greater cause of the preponderance of this court may be adduced. In the nations of Europe the courts of justice are only called upon to try the controversies of private individuals; but the Supreme Court of the United States summons sovereign powers to its bar. When the clerk of the court advances on the steps of the tribunal, and simply says, "The State of New York *versus* the State of Ohio," it is impossible not to feel that the court which he addresses is no ordinary body; and when it is recollected that one of these parties represents one million, and the other

two millions of men, one is struck by the responsibility of the seven judges whose decision is about to satisfy or to disappoint so large a number of their fellow-citizens.

The peace, the prosperity, and the very existence of the Union are vested in the hands of the seven judges. Without their active cooperation the Constitution would be a dead letter: the Executive appeals to them for assistance against the encroachments of the legislative powers; the Legislature demands their protection from the designs of the Executive; they defend the Union from the disobedience of the States, the States from the exaggerated claims of the Union, the public interest against the interests of private citizens, and the conservative spirit of order against the fleeting innovations of democracy. Their power is enormous, but it is clothed in the authority of public opinion. They are the all-powerful guardians of a people which respects law; but they would be impotent against popular neglect or popular contempt. The force of public opinion is the most intractable of agents, because its exact limits cannot be defined: and it is not less dangerous to exceed, than to remain below the boundary prescribed.

The Federal judges must not only be good citizens, and men possessed of that information and integrity which are indispensable to magistrates, but they must be statesmen,—politicians, not unread in the signs of the times, not afraid to brave

the obstacles which can be subdued, nor slow to turn aside such encroaching elements as may threaten the supremacy of the Union and the obedience which is due to the laws.

The President, who exercises a limited power, may err without causing great mischief in the State. Congress may decide amiss without destroying the Union, because the electoral body in which Congress originates may cause it to retract its decision by changing its members. But if the Supreme Court is ever composed of imprudent men or bad citizens, the Union may be plunged into anarchy or civil war.

The real cause of this danger, however, does not lie in the constitution of the tribunal, but in the very nature of Federal Governments. We have observed that in confederate peoples it is especially necessary to consolidate the judicial authority, because in no other nations do those independent persons who are able to cope with the social body, exist in greater power or in a better condition to resist the physical strength of the Government. But the more a power requires to be strengthened, the more extensive and independent it must be made; and the dangers which its abuse may create are heightened by its independence and its strength. The source of the evil is not, therefore, in the constitution of the power, but in the constitution of those States which render its existence necessary.

IN WHAT RESPECTS THE FEDERAL CONSTITUTION IS
SUPERIOR TO THAT OF THE STATES.

In what respects the Constitution of the Union can be compared to that of the States.—Superiority of the Constitution of the Union attributable to the wisdom of the Federal legislators.—Legislature of the Union less dependent on the people than that of the States.—Executive power more independent in its sphere.—Judicial power less subjected to the inclinations of the majority.—Practical consequence of these facts.—The dangers inherent in a democratic government eluded by the Federal legislators, and increased by the legislators of the States.

THE Federal Constitution differs essentially from that of the States in the ends which it is intended to accomplish; but in the means by which these ends are promoted, a greater analogy exists between them. The objects of the Governments are different, but their forms are the same; and in this special point of view there is some advantage in comparing them together.

I am of opinion that the Federal Constitution is superior to all the Constitutions of the States, for several reasons.

The present Constitution of the Union was formed at a later period than those of the majority of the States, and it may have derived some ameliorations from past experience. But we shall be led to acknowledge that this is only a secondary cause of its superiority, when we recollect that eleven new States have been added to the American Confederation

since the promulgation of the Federal Constitution, and that these new republics have always rather exaggerated than avoided the defects which existed in the former Constitutions..

The chief cause of the superiority of the Federal Constitution lay in the character of the legislators who composed it. At the time when it was formed the dangers of the Confederation were imminent, and its ruin seemed inevitable. In this extremity the people chose the men who most deserved the esteem, rather than those who had gained the affections, of the country. I have already observed that, distinguished as almost all the legislators of the Union were for their intelligence, they were still more so for their patriotism. They had all been nurtured at a time when the spirit of liberty was braced by a continual struggle against a powerful and predominant authority. When the contest was terminated, whilst the excited passions of the populace persisted in warring with dangers which had ceased to threaten them, these men stopped short in their career ; they cast a calmer and more penetrating look upon the country which was now their own ; they perceived that the war of independence was definitively ended, and that the only dangers which America had to fear were those which might result from the abuse of the freedom she had won. They had the courage to say what they believed to be true, because they were animated by a warm and sincere love of liberty ; and they ventured to propose re-

strictions, because they were resolutely opposed to destruction¹.

The greater number of the Constitutions of the

¹ At this time Alexander Hamilton, who was one of the principal founders of the Constitution, ventured to express the following sentiments in the *Federalist*, No. 71 :

• “There are some, who would be inclined to regard the servile pliancy of the Executive, to a prevailing current, either in the community or in the legislature, as its best recommendation. But such men entertain very crude notions, as well of the purposes for which government was instituted, as of the true means by which the public happiness may be promoted. The republican principle demands that the deliberative sense of the community should govern the conduct of those to whom they entrust the management of their affairs; but it does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men who flatter their prejudices to betray their interests. It is a just observation that the people commonly *intend the public good*. This often applies to their very errors. But their good sense would despise the adulator who should pretend that they always *reason right* about the *means* of promoting it. They know from experience that they sometimes err; and the wonder is that they so seldom err as they do, beset, as they continually are, by the wiles of parasites and sycophants; by the snares of the ambitious, the avaricious, the desperate; by the artifices of men who possess their confidence more than they deserve it; and of those who seek to possess, rather than to deserve it. When occasions present themselves in which the interests of the people are at variance with their inclinations, it is the duty of persons whom they have appointed to be the guardians of those interests, to withstand the temporary delusion, in order to give them time and opportunity for more cool and sedate reflection. Instances might be cited in which a conduct of this kind has saved the people from very fatal consequences of their own mistakes, and has procured lasting monuments of their gratitude to the men who had courage and magnanimity enough to serve them at the peril of their displeasure.”

States assign one year for the duration of the House of Representatives, and two years for that of the Senate ; so that members of the legislative body are constantly and narrowly tied down by the slightest desires of their constituents. The legislators of the Union were of opinion that this excessive dependence of the legislature tended to alter the nature of the main consequences of the representative system, since it vested the source not only of authority, but of government, in the people. They increased the length of the time for which the representatives were returned, in order to give them freer scope for the exercise of their own judgement.

The Federal Constitution, as well as the Constitutions of the different States, divided the legislative body into two branches. But in the States these two branches were composed of the same elements, and elected in the same manner. The consequence was that the passions and inclinations of the populace were as rapidly and as energetically represented in one chamber as in the other, and that laws were made with all the characteristics of violence and precipitation. By the Federal Constitution the two houses originate in like manner in the choice of the people ; but the conditions of eligibility and the mode of election were changed, to the end that if, as is the case in certain nations, one branch of the legislature represents the same interests as the other, it may at least represent a superior degree of intelligence and discretion. A mature age was

made one of the conditions of the senatorial dignity, and the Upper House was chosen by an elected assembly of a limited number of members.

To concentrate the whole social force in the hands of the legislative body is the natural tendency of democracies; for as this is the power which emanates the most directly from the people, it is made to participate most fully in the preponderating authority of the multitude, and it is naturally led to monopolise every species of influence. This concentration is at once prejudicial to a well-conducted administration, and favourable to the despotism of the majority. The legislators of the States frequently yielded to these democratic propensities, which were invariably and courageously resisted by the founders of the Union.

In the States the executive power is vested in the hands of a magistrate, who is apparently placed upon a level with the legislature, but who is in reality nothing more than the blind agent and the passive instrument of its decisions. He can derive no influence from the duration of his functions, which terminate with the revolving year, or from the exercise of prerogatives which can scarcely be said to exist. The legislature can condemn him to inaction by entrusting the execution of the laws to special committees of its own members, and can annul his temporary dignity by depriving him of his salary. The Federal Constitution vests all the privileges and all the responsibility of the executive power in a single

individual. The duration of the Presidency is fixed at four years ; the salary of the individual who fills that office cannot be altered during the term of his functions ; he is protected by a body of official dependents, and armed with a suspensive veto. In short, every effort was made to confer a strong and independent position upon the executive authority, within the limits which had been prescribed to it.

In the Constitutions of all the States the judicial power is that which remains the most independent of the legislative authority : nevertheless, in all the States the legislature has reserved to itself the right of regulating the emoluments of the judges, a practice which necessarily subjects these magistrates to its immediate influence. In some States the judges are only temporarily appointed, which deprives them of a great portion of their power and their freedom. In others the legislative and judicial powers are entirely confounded : thus the Senate of New York, for instance, constitutes in certain cases the superior court of the State. The Federal Constitution, on the other hand, carefully separates the judicial authority from all external influences ; and it provides for the independence of the judges, by declaring that their salary shall not be altered, and that their functions shall be inalienable.

The practical consequences of these different systems may easily be perceived. An attentive observer will soon remark that the business of the Union is incomparably better conducted than that

of any individual State. The conduct of the Federal Government is more fair and more temperate than that of the States ; its designs are more fraught with wisdom, its projects are more durable and more skilfully combined, its measures are put into execution with more vigour, and consistency.

I recapitulate the substance of this chapter in a few words :

The existence of democracies is threatened by two dangers, viz. the complete subjection of the legislative body to the caprices of the electoral body ; and the concentration of all the powers of the Government in the legislative authority.

The growth of these evils has been encouraged by the policy of the legislators of the States ; but it has been resisted by the legislators of the Union by every means which lay within their control.

CHARACTERISTICS WHICH DISTINGUISH THE FEDERAL CONSTITUTION OF THE UNITED STATES OF AMERICA FROM ALL OTHER FEDERAL CONSTITUTIONS

American Union appears to resemble all other confederations.—Nevertheless its effects are different.—Reason of this.—Distinctions between the Union and all other confederations.—The American Government not a Federal, but an imperfect national, Government.

THE United States of America do not afford either the first or the only instance of confederate States,

several of which have existed in modern Europe, without adverting to those of antiquity. Switzerland, the Germanic Empire, and the Republic of the United Provinces either have been or still are confederations. In studying the Constitutions of these different countries, the politician is surprised to observe that the powers with which they invested the Federal Government are nearly identical with the privileges awarded by the American Constitution to the Government of the United States. They confer upon the central power the same rights of making peace and war, of raising money and troops, and of providing for the general exigencies and the common interests of the nation. Nevertheless the Federal Government of these different peoples has always been as remarkable for its weakness and inefficiency as that of the Union is for its vigorous and enterprising spirit. Again, the first American Confederation perished through the excessive weakness of its Government; and this weak Government was, notwithstanding, in possession of rights even more extensive than those of the Federal Government of the present day. But the more recent Constitution of the United States contains certain principles which exercise a most important influence, although they do not at once strike the observer.

This Constitution, which may at first sight be confounded with the Federal constitutions which preceded it, rests upon a novel theory, which may be considered as a great invention in modern political

science. In all the confederations which had been formed before the American Constitution of 1789, the allied States agreed to obey the injunctions of a Federal Government ; but they reserved to themselves the right of ordaining and enforcing the execution of the laws of the Union. The American States which combined in 1789 agreed that the Federal Government should not only dictate the laws, but that it should execute its own enactments. In both cases the right is the same, but the exercise of the right is different ; and this alteration produced the most momentous consequences.

In all the confederations which had been formed before the American Union, the Federal Government demanded its supplies at the hands of the separate Governments ; and if the measure it prescribed was onerous to any one of those bodies, means were found to evade its claims : if the State was powerful, it had recourse to arms ; if it was weak, it connived at the resistance which the law of the Union, its sovereign, met with, and resorted to inaction under the plea of inability. Under these circumstances one of two alternatives has invariably occurred : either the most preponderant of the allied peoples has assumed the privileges of the Federal authority, and ruled all the other States in its name¹; or the Federal Government has been aban-

¹ This was the case in Greece, when Philip undertook to execute the decree of the Amphictyons ; in the Low Countries, where the province of Holland always gave the law ; and in our own

done by its natural supporters, anarchy has arisen between the confederates, and the Union has lost all powers of action¹.

In America, the subjects of the Union are not States, but private citizens : the national Government levies a tax, not upon the State of Massachusetts, but upon each inhabitant of Massachusetts. All former confederate governments presided over communities, but that of the Union rules individuals ; its force is not borrowed, but self-derived ; and it is served by its own civil and military officers, by its own army, and its own courts of justice. It cannot be doubted that the spirit of the nation, the passions of the multitude, and the provincial prejudices of each State, tend singularly to diminish the authority of a Federal authority thus constituted, and to facilitate the means of resistance to its mandates ; but the comparative weakness of a restricted sovereignty is an evil inherent in the Federal system. In America, each State has fewer opportunities of resistance, and fewer temptations to non-compliance ; nor can such a design be put in execution (if indeed it be entertained,) without an open violation of the laws of the Union, a direct

time in the Germanic Confederation, in which Austria and Prussia assume a great degree of influence over the whole country, in the name of the Diet.

Such has always been the situation of the Swiss Confederation, which would have perished ages ago but for the mutual jealousies of its neighbours.

interruption of the ordinary course of justice, and a bold declaration of revolt ; in a word, without taking a decisive step, which men hesitate to adopt.

In all former confederations the privileges of the Union furnished more elements of discord than of power, since they multiplied the claims of the nation without augmenting the means of enforcing them : and in accordance with this fact it may be remarked, that the real weakness of federal governments has almost always been in the exact ratio of their nominal power. Such is not the case in the American Union, in which, as in ordinary governments, the Federal Government has the means of enforcing all it is empowered to demand.

The human understanding more easily invents new things than new words, and we are thence constrained to employ a multitude of improper and inadequate expressions. When several nations form a permanent league, and establish a supreme authority, which, although it has not the same influence over the members of the community as a national government, acts upon each of the confederate States in a body, this government, which is so essentially different from all others, is denominated a Federal one. Another form of society is afterwards discovered, in which several peoples are fused into one and the same nation with regard to certain common interests, although they remain distinct, or at least only confederate, with regard to all their other concerns. In this case the central

power acts directly upon those whom it governs, whom it rules, and whom it judges, in the same manner as, but in a more limited circle than, a national government. Here the term of Federal government is clearly no longer applicable to a state of things which must be styled an, incomplete national government : a form of government has been found out which is neither exactly national nor federal ; but no further progress has been made, and the new word which will one day designate this novel invention does not yet exist.

The absence of this new species of confederation has been the cause which has brought all Unions to civil war, to subjection, or to a stagnant apathy ; and the peoples which formed these leagues have been either too dull to discern, or too pusillanimous to apply, this great remedy. The American Confederation perished by the same defects.

But the confederate States of America had been long accustomed to form a portion of one empire before they had won their independence ; they had not contracted the habit of governing themselves, and their national prejudices had not taken deep root in their minds. Superior to the rest of the world in political knowledge, and sharing that knowledge equally amongst themselves, they were little agitated by the passions which generally oppose the extension of federal authority in a nation, and those passions were checked by the wisdom of the chief citizens. The Americans applied the re-

medy with prudent firmness as soon as they were conscious of the evil ; they amended their laws, and they saved their country.

ADVANTAGES OF THE FEDERAL SYSTEM, IN GENERAL,
AND ITS SPECIAL UTILITY IN AMERICA.

Happiness and freedom of small nations.—Power of great nations.—Great empires favourable to the growth of civilization.—Strength, often the first element of national prosperity.—Aim of the Federal system to unite the twofold advantages resulting from a small and from a large territory.—Advantages derived by the United States from this system.—The law adapts itself to the exigencies of the population ; population does not conform to the exigencies of the law.—Activity, amelioration, love and enjoyment of freedom in the American communities.—Public spirit of the Union the abstract of provincial patriotism.—Principles and things circulate freely over the territory of the United States.—The Union is happy and free as a little nation, and respected as a great empire.

In small nations the scrutiny of society penetrates into every part, and the spirit of improvement enters into the most trifling details ; as the ambition of the people is necessarily checked by its weakness, all the efforts and resources of the citizens are turned to the internal benefit of the community, and are not likely to evaporate in the fleeting breath of glory. The desires of every individual are limited, because extraordinary faculties are rarely to be met with. The gifts of an equal fortune render the various

conditions of life uniform ; and the manners of the inhabitants are orderly and simple. Thus, if we estimate the gradations of popular morality and enlightenment, we shall generally find that in small nations there are more persons in easy circumstances, a more numerous population, and a more tranquil state of society, than in great empires.

When tyranny is established in the bosom of a small nation, it is more galling than elsewhere, because, as it acts within a narrow circle, every point of that circle is subject to its direct influence. It supplies the place of those great designs which it cannot entertain, by a violent or an exasperating interference in a multitude of minute details ; and it leaves the political world to which it properly belongs, to meddle with the arrangements of domestic life. Tastes as well as actions are to be regulated at its pleasure ; and the families of the citizens as well as the affairs of the State are to be governed by its decisions. This invasion of rights occurs, however, but seldom ; and freedom is in truth the natural state of small communities. The temptations which the Government offers to ambition are too weak, and the resources of private individuals are too slender, for the sovereign power easily to fall within the grasp of a single citizen : and should such an event have occurred, the subjects of the State can without difficulty overthrow the tyrant and his oppression by a simultaneous effort.

Small nations have therefore ever been the cra-

dles of political liberty : and the fact that many of them have lost their immunities by extending their dominion, shows that the freedom they enjoyed was more a consequence of their inferior size than of the character of the people.

The history of the world affords no instance of a great nation retaining the form of republican government for a long series of years¹, and this has led to the conclusion that such a state of things is impracticable. For my own part, I cannot but censure the imprudence of attempting to limit the possible, and to judge the future, on the part of a being who is hourly deceived by the most palpable realities of life, and who is constantly taken by surprise in the circumstances with which he is most familiar. But it may be advanced with confidence that the existence of a great republic will always be exposed to far greater perils than that of a small one.

All the passions which are most fatal to republican institutions spread with an increasing territory, whilst the virtues which maintain their dignity do not augment in the same proportion. The ambition of the citizens increases with the power of the State ; the strength of parties, with the importance of the ends they have in view ; but that devotion to the common weal, which is the surest check on destructive passions, is not stronger in a large than

¹ I do not speak of a confederation of small republics, but of a great consolidated republic.

in a small republic. It might, indeed, be proved without difficulty that it is less powerful and less sincere. The arrogance of wealth and the dejection of wretchedness, capital cities of unwonted extent, a lax morality, a vulgar egotism, and a great confusion of interests, are the dangers which almost invariably arise from the magnitude of States. But several of these evils are scarcely prejudicial to a monarchy, and some of them contribute to maintain its existence. In monarchical States the strength of the Government is its own ; it may use, but it does not depend on the community ; and the authority of the prince is proportioned to the prosperity of the nation : but the only security which a republican Government possesses against these evils lies in the support of the majority. This support is not, however, proportionably greater in a large republic than it is in a small one ; and thus whilst the means of attack perpetually increase both in number and in influence, the power of resistance remains the same : or it may rather be said to diminish, since the propensities and interests of the people are diversified by the increase of the population, and the difficulty of forming a compact majority is constantly augmented. It has been observed, moreover, that the intensity of human passions is heightened, not only by the importance of the end which they propose to attain, but by the multitude of individuals who are animated by them at the same time. Every one has had occasion to

remark that his emotions in the midst of a sympathizing crowd are far greater than those which he would have felt in solitude. In great republics the impetus of political passion is irresistible, not only because it aims at gigantic purposes, but because it is felt and shared by millions of men at the same time.

It may therefore be asserted as a general proposition, that nothing is more opposed to the well-being and the freedom of man than vast empires. Nevertheless it is important to acknowledge the peculiar advantages of great States. For the very reason which renders the desire of power more intense in these communities than amongst ordinary men, the love of glory is also more prominent in the hearts of a class of citizens, who regard the applause of a great people as a reward worthy of their exertions, and an elevating encouragement to man. If we would learn why it is that great nations contribute more powerfully to the spread of human improvement than small States, we shall discover an adequate cause in the rapid and energetic circulation of ideas, and in those great cities which are the intellectual centres where all the rays of human genius are reflected and combined. To this it may be added that most important discoveries demand a display of national power which the Government of a small State is unable to make; in great nations the Government entertains a greater number of general notions, and is more completely

disengaged from the routine of precedent and the egotism of local prejudice ; its designs are conceived with more talent, and executed with more boldness.

In time of peace the well-being of small nations is undoubtedly more general and more complete ; but they are apt to suffer more acutely from the calamities of war than those great empires whose distant frontiers may for ages avert the presence of the danger from the mass of the people, which is therefore more frequently afflicted than ruined by the evil.

But in this matter, as in many others, the argument derived from the necessity of the case predominates over all others. If none but small nations existed, I do not doubt that mankind would be more happy and more free ; but the existence of great nations is unavoidable.

This consideration introduces the element of physical strength as a condition of national prosperity.

It profits a people but little to be affluent and free, if it is perpetually exposed to be pillaged or subjugated ; the number of its manufactures and the extent of its commerce are of small advantage, if another nation has the empire of the seas and gives the law in all the markets of the globe. Small nations are often impoverished, not because they are small, but because they are weak ; and great empires prosper less because they are great than because they are strong. Physical strength is therefore one of the first conditions of the happi-

ness and even of the existence of nations. Hence it occurs, that unless very peculiar circumstances intervene, small nations are always united to large empires in the end, either by force or by their own consent : yet I am unacquainted with a more deplorable spectacle than that of a people unable either to defend or to maintain its independence.

The Federal system was created with the intention of combining the different advantages which result from the greater and the lesser extent of nations ; and a single glance over the United States of America suffices to discover the advantages which they have derived from its adoption.

In great centralized nations the legislator is obliged to impart a character of uniformity to the laws, which does not always suit the diversity of customs and of districts ; as he takes no cognizance of special cases, he can only proceed upon general principles ; and the population is obliged to conform to the exigencies of the legislation, since the legislation cannot adapt itself to the exigencies and the customs of the population ; which is the cause of endless trouble and misery. This disadvantage does not exist in confederations ; Congress regulates the principal measures of the national Government, and all the details of the administration are reserved to the provincial legislatures. It is impossible to imagine how much this division of sovereignty contributes to the well-being of each of the States which compose the Union. In these small com-

munities which are never agitated by the desire of aggrandizement or the cares of self-defence, all public authority and private energy is employed in internal amelioration. The central Government of each State, which is in immediate juxtaposition to the citizens, is daily apprized of the wants which arise in society; and new projects are proposed every year, which are discussed either at town-meetings or by the legislature of the State, and which are transmitted by the press to stimulate the zeal and to excite the interest of the citizens. This spirit of amelioration is constantly alive in the American republics, without compromising their tranquillity; the ambition of power yields to the less refined and less dangerous love of comfort. It is generally believed in America that the existence and the permanence of the republican form of government in the New World depend upon the existence and the permanence of the Federal system; and it is not unusual to attribute a large share of the misfortunes which have befallen the New States of South America to the injudicious erection of great republics, instead of a divided and confederate sovereignty.

It is incontestably true that the love and the habits of republican government in the United States were engendered in the townships and in the provincial assemblies. In a small State, like that of Connecticut for instance, where cutting a canal or laying down a road is a momentous political

question, where the State has no army to pay and no wars to carry on, and where much wealth and much honour cannot be bestowed upon the chief citizens, no form of government can be more natural or more appropriate than that of a republic. But it is this same republican spirit, it is these manners and customs of a free people, which are engendered and nurtured in the different States, to be afterwards applied to the country at large. The public spirit of the Union is, so to speak, nothing more than an abstract of the patriotic zeal of the provinces. Every citizen of the United States transfuses his attachment to his little republic into the common store of American patriotism. In defending the Union, he defends the increasing prosperity of his own district, the right of conducting its affairs, and the hope of causing measures of improvement to be adopted which may be favourable to his own interests; and these are motives which are wont to stir men more readily than the general interests of the country and the glory of the nation.

On the other hand, if the temper and the manners of the inhabitants especially fitted them to promote the welfare of a great republic, the Federal system smoothed the obstacles which they might have encountered. The confederation of all the American States presents none of the ordinary disadvantages resulting from great agglomerations of men. The Union is a great republic in extent, but

the paucity of objects for which its Government provides assimilates it to a small State. Its acts are important, but they are rare. As the sovereignty of the Union is limited and incomplete, its exercise is not incompatible with 'liberty'; for it does not excite those insatiable desires of fame and power which have proved so fatal to great republics. As there is no common centre to the country, vast capital cities, colossal wealth, abject poverty, and sudden revolutions are alike unknown; and political passion, instead of spreading over the land like a torrent of desolation, spends its strength against the interests and the individual passions of every State.

Nevertheless, all commodities and ideas circulate throughout the Union as freely as in a country inhabited by one people. Nothing checks the spirit of enterprise. The Government avails itself of the assistance of all who have talents or knowledge to serve it. Within the frontiers of the Union the profoundest peace prevails; as within the heart of some great empire; abroad, it ranks with the most powerful nations of the earth: two thousand miles of coast are open to the commerce of the world; and as it possesses the keys of the globe, its flag is respected in the most remote seas. The Union is as happy and as free as a small people, and as glorious and as strong as a great nation.

WHY THE FEDERAL SYSTEM IS NOT ADAPTED TO ALL PEOPLES, AND HOW THE ANGLO-AMERICANS WERE ENABLED TO ADOPT IT.

Every Federal system contains defects which baffle the efforts of the legislator.—The Federal system is complex.—It demands a daily exercise of discretion on the part of the citizens.—Practical knowledge of government common amongst the Americans.—Relative weakness of the Government of the Union, another defect inherent in the Federal system.—The Americans have diminished without remedying it.—The sovereignty of the separate States apparently weaker, but really stronger, than that of the Union.—Why.—Natural causes of union must exist between confederate peoples beside the laws.—What these causes are amongst the Anglo-Americans.—Maine and Georgia, separated by a distance of a thousand miles, more naturally united than Normandy and Britany.—War, the main peril of confederations.—This proved even by the example of the United States.—The Union has no great wars to fear.—Why.—Dangers to which Europeans would be exposed if they adopted the Federal system of the Americans.

WHEN a legislator succeeds, after persevering efforts, in exercising an indirect influence upon the destiny of nations, his genius is lauded by mankind, whilst, in point of fact, the geographical position of the country which he is unable to change, a social condition which arose without his cooperation, manners and opinions which he cannot trace to their source, and an origin with which he is unacquainted, exercise so irresistible an influence over the courses of society, that he is himself borne away by the current, after an ineffectual resistance. Like the

navigator, he may direct the vessel which bears him along, but he can neither change its structure, nor raise the winds, nor lull the waters which swell beneath him.

I have shown the advantages which the Americans derive from their Federal system; it remains for me to point out the circumstances which rendered that system practicable, as its benefits are not to be enjoyed by all nations. The incidental defects of the Federal system which originate in the laws may be corrected by the skill of the legislator, but there are further evils inherent in the system which cannot be counteracted by the peoples which adopt it. These nations must therefore find the strength necessary to support the natural imperfections of their Government.

The most prominent evil of all Federal systems is the very complex nature of the means they employ. Two sovereignties are necessarily in presence of each other. The legislator may simplify and equalize the action of these two sovereignties, by limiting each of them to a sphere of authority accurately defined; but he cannot combine them into one, or prevent them from coming into collision at certain points. The Federal system therefore rests upon a theory which is necessarily complicated, and which demands the daily exercise of a considerable share of discretion on the part of those it governs.

A proposition must be plain to be adopted by the understanding of a people. A false notion which is

clear and precise will always meet with a greater number of adherents in the world than a true principle which is obscure or involved. Hence it arises that parties, which are like small communities in the heart of the nation, invariably adopt some principle or some name as a symbol, which very inadequately represents the end they have in view and the means which are at their disposal, but without which they could neither act nor subsist. The Governments which are founded upon a single principle or a single feeling which is easily defined, are perhaps not the best, but they are unquestionably the strongest and the most durable in the world.

In examining the Constitution of the United States, which is the most perfect Federal Constitution that ever existed, one is startled, on the other hand, at the variety of information and the excellence of discretion which it presupposes in the people whom it is meant to govern. The Government of the Union depends entirely upon legal fictions; the Union is an ideal nation which only exists in the mind, and whose limits and extent can only be discerned by the understanding.

When once the general theory is comprehended, numberless difficulties remain to be solved in its application; for the sovereignty of the Union is so involved in that of the States, that it is impossible to distinguish its boundaries at the first glance. The whole structure of the Government is artificial and conventional; and it would be ill adapted to a

people which has not been long accustomed to conduct its own affairs, or to one in which the science of politics has not descended to the humblest classes of society. I have never been more struck by the good sense and the practical judgement of the Americans than in the ingenious devices by which they elude the numberless difficulties resulting from their Federal Constitution. I scarcely ever met with a plain American citizen who could not distinguish, with surprising facility, the obligations created by the laws of Congress from those created by the laws of his own State ; and who, after having discriminated between the matters which come under the cognizance of the Union, and those which the local legislature is competent to regulate, could not point out the exact limit of the several jurisdictions of the Federal Courts and the tribunals of the State.

The Constitution of the United States is like those exquisite productions of human industry which ensure wealth and renown to their inventors, but which are profitless in any other hands. This truth is exemplified by the condition of Mexico at the present time. The Mexicans were desirous of establishing a Federal system, and they took the Federal Constitution of their neighbours the Anglo-Americans as their model, and copied it with considerable accuracy¹. But although they had borrowed the letter of the law, they were unable to create or to in-

¹ See the Mexican Constitution of 1824.

roduce the spirit and the sense which give it life. They were involved in ceaseless embarrassments between the mechanism of their double Government ; the sovereignty of the States and that of the Union perpetually exceeded their respective privileges, and entered into collision ; and to the present day Mexico is alternately the victim of anarchy and the slave of military despotism.

The second and the most fatal of all the defects I have alluded to, and that which I believe to be inherent in the Federal system, is the relative weakness of the Government of the Union. The principle upon which all confederations rest is that of a divided sovereignty. The legislator may render this partition less perceptible, he may even conceal it for a time from the public eye, but he cannot prevent it from existing ; and a divided sovereignty must always be less powerful than an entire supremacy. The reader has seen in the remarks I have made on the Constitution of the United States, that the Americans have displayed singular ingenuity in combining the restriction of the power of the Union within the narrow limits of a Federal Government, with the semblance, and to a certain extent with the force, of a national Government. By this means the legislators of the Union have succeeded in diminishing, though not in counteracting, the natural danger of confederations.

It has been remarked that the American Government does not apply itself to the States, but that it

immediately transmits its injunctions to the citizens, and compels them as isolated individuals to comply with its demands. But if the Federal law were to clash with the interests and the prejudices of a State, it might be feared that all the citizens of that State would conceive themselves to be interested in the cause of a single individual who should refuse to obey. If all the citizens of the State were aggrieved at the same time and in the same manner by the authority of the Union, the Federal Government would vainly attempt to subdue them individually; they would instinctively unite in a common defence, and they would derive a ready-prepared organization from the share of sovereignty which the institution of their State allows them to enjoy. Fiction would give way to reality, and an organized portion of the territory might then contest the central authority.

The same observation holds good with regard to the Federal jurisdiction. If the courts of the Union violated an important law of a State in a private case, the real, if not the apparent contest would arise between the aggrieved State represented by a citizen, and the Union represented by its courts of justice¹.

¹ For instance, the Union possesses by the Constitution the right of selling unoccupied lands for its own profit. Supposing that the State of Ohio should claim the same right in behalf of certain territories lying within its boundaries, upon the plea that the Constitution refers to those lands alone which do not belong to the jurisdiction of any particular State, and consequently should

He would have but a partial knowledge of the world who should imagine that it is possible, by the aid of legal fictions, to prevent men from finding out and employing those means of gratifying their passions which have been left open to them; and it may be doubted whether the American legislators, when they rendered a collision between the two sovereignties less probable, destroyed the causes of such a misfortune. But it may even be affirmed that they were unable to ensure the preponderance of the Federal element in a case of this kind. The Union is possessed of money and of troops, but the affections and the prejudices of the people are in the bosom of the States. The sovereignty of the Union is an abstract being, which is connected with but few external objects; the sovereignty of the States is hourly perceptible, easily understood, constantly active; and if the former is of recent creation, the latter is coeval with the people itself. The sovereignty of the Union is factitious, that of the States is natural, and derives its existence from its own simple influence, like the authority of a parent. The supreme power of the nation only affects a few of the chief interests of

choose to dispose of them itself, the litigation would be carried on in the names of the purchasers from the State of Ohio and the purchasers from the Union, and not in the names of Ohio and the Union. But what would become of this legal fiction if the Federal purchaser was confirmed in his right by the courts of the Union, whilst the other competitor was ordered to retain possession by the tribunals of the State of Ohio?

society ; it represents an immense but remote country, and claims a feeling of patriotism which is vague and ill defined ; but the authority of the States controls every individual citizen at every hour and in all circumstances ; it protects his property, his freedom, and his life ; and when we recollect the traditions, the customs, the prejudices of local and familiar attachment with which it is connected, we cannot doubt of the superiority of a power which is interwoven with every circumstance that renders the love of one's native country instinctive in the human heart.

Since legislators are unable to obviate such dangerous collisions as occur between the two sovereignties which co-exist in the Federal system, their first object must be, not only to dissuade the confederate States from warfare, but to encourage such institutions as may promote the maintenance of peace. Hence it results that the Federal compact cannot be lasting unless there exists in the communities which are leagued together, a certain number of inducements to union which render their common dependence agreeable, and the task of the government light ; and that system cannot succeed without the presence of favourable circumstances added to the influence of good laws. All the peoples which have ever formed a confederation have been held together by a certain number of common interests, which served as the intellectual ties of association.

. But the sentiments and the principles of man must be taken into consideration as well as his immediate interests. A certain uniformity of civilization is not less necessary to the durability of a confederation, than a uniformity of interests in the States which compose it. In Switzerland the difference which exists between the Canton of Uri and the Canton of Vaud is equal to that between the fifteenth and the nineteenth centuries; and, properly speaking, Switzerland has never possessed a Federal Government. The Union between these two Cantons only subsists upon the map; and their discrepancies would soon be perceived if an attempt were made by a central authority to prescribe the same laws to the whole territory.

One of the circumstances which most powerfully contribute to support the Federal Government in America, is that the States have not only similar interests, a common origin, and a common tongue, but that they are also arrived at the same stage of civilization; which almost always renders a union feasible. I do not know of any European nation, how small soever it may be, which does not present less uniformity in its different provinces than the American people, which occupies a territory as extensive as one half of Europe. The distance from the State of Maine to that of Georgia is reckoned at about one thousand miles; but the difference between the civilization of Maine and that of Georgia is slighter than the difference between

the habits of Normandy and those of Britany. Maine and Georgia, which are placed at the opposite extremities of a great empire, are consequently in the natural possession of more real inducements to form a confederation than Normandy and Britany, which are only separated by a bridge.

The geographical position of the country contributed to increase the facilities which the American legislators derived from the manners and customs of the inhabitants ; and it is to this circumstance that the adoption and the maintenance of the Federal system is mainly attributable.

The most important occurrence which can mark the annals of a people is the breaking out of a war. In war a people struggles with the energy of a single man against foreign nations, in the defence of its very existence. The skill of a Government, the good sense of the community, and the natural fondness which men entertain for their country, may suffice to maintain peace in the interior of a district, and to favour its internal prosperity : but a nation can only carry on a great war at the cost of more numerous and more painful sacrifices ; and to suppose that a great number of men will of their own accord comply with these exigencies of the State, is to betray an ignorance of mankind. All the peoples which have been obliged to sustain a long and serious warfare have consequently been led to augment the power of their Government. Those which have not succeeded in this

attempt have been subjugated. A long war almost always places nations in the wretched alternative of being abandoned to ruin by defeat, or to despotism by success. War therefore renders the symptoms of the weakness of a government most palpable and most alarming; and I have shown that the inherent defect of Federal Governments is that of being weak.

The Federal system is not only deficient in every kind of centralized administration, but the central Government itself is imperfectly organized, which is invariably an influential cause of inferiority when the nation is opposed to other countries which are themselves governed by a single authority. In the Federal Constitution of the United States, by which the central Government possesses more real force, this evil is still extremely sensible. An example will illustrate the case to the reader.

The Constitution confers upon Congress the right of "calling forth militia to execute the laws of the Union, suppress insurrections, and repel invasions"; and another article declares that the President of the United States is the commander-in-chief of the militia. In the war of 1812 the President ordered the militia of the Northern States to march to the frontiers; but Connecticut and Massachusetts, whose interests were impaired by the war, refused to obey the command. They argued that the Constitution authorizes the Federal Government to call forth the militia in cases of insurrection or invasion, but that

in the present instance there was neither invasion nor insurrection. They added, that the same Constitution which conferred upon the Union the right of calling forth the militia, reserved to the States that of naming the officers; and that consequently (as they understood the clause) no officer of the Union had any right to command the militia, even during war, except the President in person: and in this case they were ordered to join an army commanded by another individual. These absurd and pernicious doctrines received the sanction not only of the Governors and the Legislative bodies, but also of the courts of justice in both States; and the Federal Government was constrained to raise elsewhere the troops which it required¹.

The only safeguard which the American Union, with all the relative perfection of its laws, possesses against the dissolution which would be produced by a great war, lies in its probable exemption from that calamity. Placed in the centre of an immense conti-

¹ Kent's Commentaries, vol. i. p. 244. I have selected an example which relates to a time posterior to the promulgation of the present Constitution. If I had gone back to the days of the Confederation, I might have given still more striking instances. The whole nation was at that time in a state of enthusiastic excitement; the Revolution was represented by a man who was the idol of the people; but at that very period Congress had, to say the truth, no resources at all at its disposal. Troops and supplies were perpetually wanting. The best devised projects failed in the execution, and the Union, which was constantly on the verge of destruction, was saved by the weakness of its enemies far more than by its own strength.

ment, which offers a boundless field for human industry, the Union is almost as much insulated from the world as if its frontiers were girt by the Ocean. Canada contains only a million of inhabitants, and its population is divided into two inimical nations. The rigour of the climate limits the extension of its territory, and shuts up its ports during the six months of winter. From Canada to the Gulf of Mexico a few savage tribes are to be met with, which retire, perishing in their retreat, before six thousand soldiers. To the South, the Union has a point of contact with the empire of Mexico; and it is thence that serious hostilities may one day be expected to arise. But for a long while to come the uncivilized state of the Mexican community, the depravity of its morals, and its extreme poverty, will prevent that country from ranking high amongst nations. As for the powers of Europe, they are too distant to be formidable.

The great advantage of the United States does not, then, consist in a Federal Constitution which allows them to carry on great wars, but in a geographical position which renders such enterprises extremely improbable.

No one can be more inclined than I am myself to appreciate the advantages of the Federal system, which I hold to be one of the combinations most favourable to the prosperity and freedom of man. I envy the lot of those nations which have been enabled to adopt it; but I cannot believe that any

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confederate peoples could maintain a long or an equal contest with a nation of similar strength in which the Government should be centralized. A people which should divide its sovereignty into fractional powers, in the presence of the great military monarchies of Europe, would in my opinion, by that very act, abdicate its power, and perhaps its existence and its name. But such is the admirable position of the New World, that man has no other enemy than himself ; and that in order to be happy and to be free, it suffices to seek the gifts of prosperity and the knowledge of freedom.

A. P P E N D I X.

APPENDIX A.—Page 5.

FOR information concerning all the countries of the West which have not been visited by Europeans, consult the account of two expeditions undertaken at the expense of Congress by Major Long. This traveller particularly mentions, on the subject of the great American desert, that a line may be drawn nearly parallel to the 20th degree of longitude¹ (meridian of Washington), beginning from the Red River and ending at the river Platte. From this imaginary line to the Rocky Mountains, which bound the valley of the Mississippi on the West, lie immense plains, which are almost entirely covered with sand incapable of cultivation, or scattered over with masses of granite. In summer these plains are quite destitute of water, and nothing is to be seen on them but herds of buffaloes and wild horses. Some hordes of Indians are also found there, but in no great numbers.

Major Long was told that in travelling northwards from the river Platte you find the same desert lying constantly on the left; but he was unable to ascertain the truth of this report. (Long's Expedition, vol. ii. p. 361.)

However worthy of confidence may be the narrative of

¹ The 20th degree of longitude according to the meridian of Washington, agrees very nearly with the 97th degree on the meridian of Greenwich.

Major Long, it must be remembered that he only passed through the country of which he speaks, without deviating widely from the line which he had traced out for his journey.

APPENDIX B.—Page 7.

South America, in the regions between the tropics, produces an incredible profusion of climbing-plants, of which the Flora of the Antilles alone presents us with forty different species.

Among the most graceful of these shrubs is the Passion-flower, which, according to Descourtiz, grows with such luxuriance in the Antilles; as to climb trees by means of the tendrils with which it is provided, and form moving bowers of rich and elegant festoons, decorated with blue and purple flowers, and fragrant with perfume. (Vol. i. p. 265.)

The *Mimosa scandens* (Acacia à grandes gousses) is a creeper of enormous and rapid growth, which climbs from tree to tree; and sometimes covers more than half a league. (Vol. iii. p. 227.)

APPENDIX C.—Page 10.

The languages which are spoken by the Indians of America, from the Pole to Cape Horn, are said to be all formed upon the same model, and subject to the same grammatical rules; whence it may fairly be concluded that all the Indian nations sprang from the same stock.

Each tribe of the American continent speaks a different dialect; but the number of languages, properly so called;

is very small, a fact which tends to prove that the nations of the New World had not a very remote origin.

Moreover, the languages of America have a great degree of regularity; from which it seems probable that the tribes which employ them had not undergone any great revolutions, or been incorporated, voluntarily or by constraint, with foreign nations. For it is generally the union of several languages into one which produces grammatical irregularities.

It is not long since the American languages, especially those of the North, first attracted the serious attention of philologists, when the discovery was made, that this idiom of a barbarous people was the product of a complicated system of ideas and very learned combinations. These languages were found to be very rich, and great pains had been taken at their formation to render them agreeable to the ear.

The grammatical system of the Americans differs from all others in several points, but especially in the following:

Some nations of Europe, amongst others the Germans, have the power of combining at pleasure different expressions, and thus giving a complex sense to certain words. The Indians have given a most surprising extension to this power, so as to arrive at the means of connecting a great number of ideas with a single term. This will be easily understood with the help of an example quoted by Mr. Duponceau, in the Memoirs of the Philosophical Society of America.

“A Delaware woman playing with a cat or a young dog,” says this writer, “is heard to pronounce the word *kuligatschis*; which is thus composed: *k* is the sign of the second person, and signifies ‘thou’ or ‘thy’; *uli* is a part of the word *wulit*, which signifies ‘beautiful’, ‘pretty’; *gal* is another fragment of the word *wichgat*, which means

‘paw’; and lastly, *schis* is a diminutive giving the idea of smallness. Thus in one word the Indian woman has expressed, ‘Thy pretty little paw.’”

Take another example of the felicity with which the savages of America have composed their words. A young man of Delaware is called *pilapé*. This word is formed from *pilsit*, chaste, innocent; and *lenapé*, man; viz. man in his purity and innocence.

This facility of combining words is most remarkable in the strange formation of their verbs. The most complex action is often expressed by a single verb, which serves to convey all the shades of an idea by the modification of its construction.

Those who may wish to examine more in detail this subject, which I have only glanced at superficially, should read:

1. The correspondence of Mr. Duponceau and the Rev. Mr. Hecwelder relative to the Indian languages; which is to be found in the first volume of the Memoirs of the Philosophical Society of America, published at Philadelphia, 1819, by Abraham Small; vol. i. p. 356—464.

2. The grammar of the Delaware or Lenape language by Geiberger, and the preface of Mr. Duponceau. All these are in the same collection, vol. iii.

3. An excellent account of these works which is at the end of the 6th volume of the American Encyclopædia.

APPENDIX D.—Page 13.

See in Charlevoix, vol. i. p. 235, the history of the first war which the French inhabitants of Canada carried on, in 1610, against the Iroquois. The latter, armed with

bows and arrows, offered a desperate resistance to the French and their allies. Charlevoix is not a great painter, yet he exhibits clearly enough, in this narrative, the contrast between the European manners and those of savages, as well as the different way in which the two races of men understood the sense of honour. .

When the French, says he, seized upon the beaver-skins which covered the Indians who had fallen, the Hurons, their allies, were greatly offended at this proceeding ; but without hesitation they set to work in their usual manner, inflicting horrid cruelties upon the prisoners, and devouring one of those who had been killed, which made the Frenchmen shudder. The barbarians prided themselves upon a scrupulousness which they were surprised at not finding in our nation ; and could not understand that there was less to reprehend in the stripping of dead bodies than in the devouring of their flesh like wild beasts.

Charlevoix in another place (vol. i. p. 230,) thus describes the first torture of which Champlain was an eye-witness, and the return of the Hurons into their own village.

Having proceeded about eight leagues, says he, our allies halted ; and having singled out one of their captives, they reproached him with all the cruelties which he had practised upon the warriors of their nation who had fallen into his hands, and told him that he might expect to be treated in like manner ; adding, that if he had any spirit he would prove it by singing. He immediately chanted forth his death-song, and then his war-song, and all the songs he knew, " but in a very mournful strain," says Champlain, who was not then aware that all savage music has a melancholy character. The tortures which succeeded, accompanied by all the horrors which we shall mention hereafter, terrified the French, who made every effort to put a stop to them, but in vain. The following night one of the

Hurons having dreamt that they were pursued, the retreat was changed to a real flight, and the savages never stopped until they were out of the reach of danger.

The moment they perceived the cabins of their own village, they cut themselves long sticks, to which they fastened the scalps which had fallen to their share, and carried them in triumph. At this sight, the women swam to the canoes, where they received the bloody scalps from the hands of their husbands, and tied them round their necks.

The warriors offered one of these horrible trophies to Champlain; they also presented him with some bows and arrows,—the only spoils of the Irôquois which they had ventured to seize,—entreating him to show them to the King of France.

Champlain lived a whole winter quite alone among these barbarians, without being under any alarm for his person or property.

APPENDIX E.—Page 38.

Although the puritanical strictness which presided over the establishment of the English colonies in America is now much relaxed, remarkable traces of it are still found in their habits and their laws. In 1792, at the very time when the anti-Christian republic of France began its ephemeral existence, the legislative body of Massachusetts promulgated the following law, to compel the citizens to observe the Sabbath. We give the preamble and the principal articles of this law, which is worthy of the reader's attention.

“Whereas,” says the legislator, “the observation of the Sunday is an affair of public interest; in as much as it produces a necessary suspension of labour, leads men to reflect upon the duties of life and the errors to which human nature is liable, and provides for the public and private worship of God the creator and governor of the universe, and for the performance of such acts of charity as are the ornament and comfort of Christian societies :—

“Whereas irreligious or light-minded persons, forgetting the duties which the Sabbath imposes, and the benefits which these duties confer on society, are known to profane its sanctity, by following their pleasures or their affairs ; this way of acting being contrary to their own interest as Christians, and calculated to annoy those who do not follow their example ; being also of great injury to society at large, by spreading a taste for dissipation and dissolute manners ;

“Be it enacted and ordained by the Governor, Council, and Representatives convened in General Court of Assembly, that all and every person and persons shall on that day carefully apply themselves to the duties of religion and piety, that no tradesman or labourer shall exercise his ordinary calling, and that no game or recreation shall be used on the Lord’s Day, upon pain of forfeiting ten shillings.

“That no one shall travel on that day, or any part thereof, under pain of forfeiting twenty shillings ; that no vessel shall leave a harbour of the colony ; that no persons shall keep outside the meeting-house during the time of public worship, or profane the time by playing or talking, on penalty of five shillings.

“Public-houses shall not entertain any other than strangers or lodgers, under penalty of five shillings for every person found drinking and abiding therein.

“Any person in health who, without sufficient reason,

shall omit to worship God in public during three months, shall be condemned to a fine of ten shillings.

“Any person guilty of misbehaviour in a place of public worship shall be fined from five to forty shillings.

“These laws are to be enforced by the tithing-men of each township, who have authority to visit public-houses on the Sunday. The innkeeper who shall refuse them admittance shall be fined forty shillings for such offence.

“The tithing-men are to stop travellers, and require of them their reason for being on the road on Sunday: any one refusing to answer shall be sentenced to pay a fine not exceeding five pounds sterling. If the reason given by the traveller be not deemed by the tithing-man sufficient, he may bring the traveller before the justice of the peace of the district. (*Law of the 8th March, 1792: General Laws of Massachusetts*, vol. i. p. 410.)

On the 11th March, 1797, a new law increased the amount of fines, half of which was to be given to the informer. (*Same collection*, vol. ii. p. 525.)

On the 16th February, 1816, a new law confirmed these same measures. (*Same collection*, vol. ii. p. 405.)

Similar enactments exist in the laws of the State of New York, revised in 1827 and 1823. (See *Revised Statutes*, Part I. chapter 20, p. 675.) In these it is declared that no one is allowed on the Sabbath to sport, to fish, to play at games, or to frequent houses where liquor is sold. No one can travel, except in case of necessity.

And this is not the only trace which the religious strictness and austere manners of the first emigrants have left behind them in the American laws.

In the revised statutes of the State of New York, vol. i. p. 662, is the following clause:

“Whoever shall win or lose in the space of twenty four hours, by gaming or betting, the sum of twenty-five dol-

lars, shall be found guilty of a misdemeanour, and, upon conviction, shall be condemned to pay a fine equal to at least five times the value of the sum lost or won, which shall be paid to the inspector of the poor of the township. He that loses twenty-five dollars or more may bring an action to recover them; and if he neglects to do so, the inspector of the poor may prosecute the winner, and oblige him to pay into the poor's box both the sum he has gained and three times as much besides.

The laws we quote from are of recent date; but they are unintelligible without going back to the very origin of the colonies. I have no doubt that in our days the penal part of these laws is very rarely applied. Laws preserve their inflexibility long after the manners of a nation have yielded to the influence of time. It is still true, however, that nothing strikes a foreigner on his arrival in America, more forcibly than the regard paid to the Sabbath.

There is one, in particular, of the large American cities, in which all social movements begin to be suspended even on Saturday evening. You traverse its streets at the hour at which you expect men in the middle of life to be engaged in business, and young people in pleasure; and you meet with solitude and silence. Not only have all ceased to work, but they appear to have ceased to exist. Neither the movements of industry are heard, nor the accents of joy, nor even the confused innumur which arises from the midst of a great city. Chains are hung across the streets in the neighbourhood of the churches; the half-closed shutters of the houses scarcely admit a ray of sun into the dwellings of the citizens. Now and then you perceive a solitary individual who glides silently along the deserted streets and lanes.

Next day, at early dawn, the rolling of carriages, the noise of hammers, the cries of the population, begin to

make themselves heard again. The city is awake. An eager crowd hastens towards the resort of commerce and industry ; everything around you bespeaks motion, bustle, hurry. A feverish activity succeeds to the lethargic stupor of yesterday ; you might almost suppose that they had but one day to acquire wealth and to enjoy it.

APPENDIX F.—Page 46

It is unnecessary for me to say, that in the chapter which has just been read, I have not had the intention of giving a history of America. My only object was to enable the reader to appreciate the influence which the opinions and manners of the first emigrants had exercised upon the fate of the different colonies, and of the Union in general. I have therefore confined myself to the quotation of a few detached fragments.

I do not know whether I am deceived, but it appears to me that by pursuing the path which I have merely pointed out, it would be easy to present such pictures of the American republics as would not be unworthy the attention of the public, and could not fail to suggest to the statesman matter for reflection.

Not being able to devote myself to this labour, I am anxious to render it easy to others ; and, for this purpose, I subjoin a short catalogue and analysis of the works which seem to me the most important to consult.

At the head of the general documents which it would be advantageous to examine, I place the work entitled *An Historical Collection of State Papers, and other authentic Documents, intended as materials for a History of the United States of America ; by Ebenezer Hazard.*

The first volume of this compilation, which was printed at Philadelphia in 1792, contains a literal copy of all the charters granted by the Crown of England to the emigrants, as well as the principal acts of the colonial governments, during the commencement of their existence. Amongst other authentic documents, we here find a great many relating to the affairs of New England and Virginia during this period. The second volume is almost entirely devoted to the acts of the Confederation of 1643. This Federal compact, which was entered into by the colonies of New England with the view of resisting the Indians, was the first instance of union afforded by the Anglo-Americans. There were besides many other confederations of the same nature, before the famous one of 1776, which brought about the independence of the colonies.

Each colony has, besides, its own historic monuments, some of which are extremely curious; beginning with Virginia, the State which was first peopled. The earliest historian of Virginia was its founder, Capt. John Smith. Capt. Smith has left us an octavo volume, entitled *The generall Historie of Virginia and New England, by Captain John Smith, sometymes Governor in those Countryes, and Admirall of New England; printed at London in 1627*. The work is adorned with curious maps and engravings of the time when it appeared; the narrative extends from the year 1584 to 1626. Smith's work is highly and deservedly esteemed. The author was one of the most celebrated adventurers of a period of remarkable adventure; his book breathes that ardour for discovery, that spirit of enterprise which characterized the men of his time, when the manners of chivalry were united to zeal for commerce, and made subservient to the acquisition of wealth.

But Capt. Smith is most remarkable for uniting, to the virtues which characterized his cotemporaries, several

qualities to which they were generally strangers; his style is simple and concise, his narratives bear the stamp of truth, and his descriptions are free from false ornament.

This author throws most valuable light upon the state and condition of the Indians at the time when North America was first discovered.

The second historian to consult is Beverley, who commences his narrative with the year 1585, and ends it with 1700. The first part of his book contains historical documents properly so called, relative to the infancy of the colony. The second affords a most curious picture of the state of the Indians at this remote period. The third conveys very clear ideas concerning the manners, social condition, laws, and political customs of the Virginians in the author's lifetime.

Beverley was a native of Virginia, which occasions him to say at the beginning of his book that he entreats his readers not to exercise their critical severity upon it, since, having been born in the Indies, he does not aspire to purity of language. Notwithstanding this colonial modesty, the author shows throughout his book the impatience with which he endures the supremacy of the mother-country. In this work of Beverley are also found numerous traces of that spirit of civil liberty which animated the English Colonies of America at the time when he wrote. He also shows the dissensions which existed among them and retarded their independence. Beverley detests his Catholic neighbours of Maryland even more than he hates the English Government: his style is simple, his narrative interesting and apparently trustworthy.

I saw in America another work which ought to be consulted, entitled *The History of Virginia, by William Stith*. This book affords some curious details, but I thought it long and diffuse.

The most ancient as well as the best document to be consulted on the history of Carolina is a work in small quarto, entitled *The History of Carolina, by John Lawson, printed at London in 1718*. This work contains in the first part, a journey of discovery in the west of Carolina; the account of which, given in the form of a journal, is in general confused and superficial; but it contains a very striking description of the mortality caused among the savages of that time both by the smallpox and the immoderate use of brandy; with a curious picture of the corruption of manners prevalent amongst them, which was increased by the presence of Europeans. The second part of Lawson's book is taken up with a description of the physical condition of Carolina, and its productions. In the third part, the author gives an interesting account of the manners, customs, and government of the Indians at that period. There is a good deal of talent and originality in this part of the work.

Lawson concludes his History with a copy of the Charter granted to the Carolinas in the reign of Charles II. The general tone of this work is light, and often licentious, forming a perfect contrast to the solemn style of the works published at the same period in New England. Lawson's History is extremely scarce in America, and cannot be procured in Europe. There is, however, a copy of it in the Royal Library at Paris.

From the southern extremity of the United States I pass at once to the northern limit; as the intermediate space was not peopled till a later period.

I must first point out a very curious compilation, entitled *Collection of the Massachusetts Historical Society, printed for the first time at Boston in 1792, and reprinted in 1806*, The Collection of which I speak, and which is continued to the present day, contains a great number of very valu-

able documents relating to the history of the different States of New England. Among them are letters which have never been published, and authentic pieces which had been buried in provincial archives. The whole work of Gookin concerning the Indians¹ is inserted there.

I have mentioned several times in the chapter to which this note relates the work of Nathaniel Norton, entitled *New England's Memorial*; sufficiently perhaps to prove that it deserves the attention of those who would be conversant with the history of New England. This book is in 8vo, and was reprinted at Boston in 1826.

The most valuable and important authority which exists upon the history of New England is the work of the Rev. Cotton Mather, entitled *Magnolia Christi Americana; or the Ecclesiastical History of New England, 1620-1698*, 2 vols. 8vo, reprinted at Hartford, United States, in 1820¹. The author divided his work into seven books. The first presents the history of the events which prepared and brought about the establishment of New England. The second contains the lives of the first governors and chief magistrates who presided over the country. The third is devoted to the lives and labours of the evangelical ministers who during the same period had the care of souls. In the fourth the author relates the institution and progress of the University of Cambridge (Massachusetts). In the fifth he describes the principles and the discipline of the Church of New England. The sixth is taken up in retracing certain facts, which, in the opinion of Mather, prove the merciful interposition of Providence in behalf of the inhabitants of New England. Lastly, in the seventh, the author gives an account of the heresies and the troubles to which the Church of New England was exposed. Cotton Mather was an evangelical

¹ A folio edition of this work was published in London in 1792.

minister who was born at Boston, and passed his life there. His narratives are distinguished by the same ardour and religious zeal which led to the foundation of the colonies of New England. Traces of bad taste sometimes occur in his manner of writing; but he interests, because he is full of enthusiasm. He is often intolerant, still oftener credulous, but he never betrays an intention to deceive. Sometimes his book contains fine passages, and true and profound reflections, such as the following:

"Before the arrival of the Puritans," says he, (vol. i. chap. iv.) "there were more than a few attempts of the English to people and improve the parts of New England which were to the northward of New Plymouth; but the designs of those attempts being aimed no higher than the advancement of some worldly interests, a constant series of disasters has confounded them, until there was a plantation erected upon the nobler designs of Christianity: and that plantation, though it has had more adversaries than perhaps any one upon earth, yet, having obtained help from God, it continues to this day."

Mather occasionally relieves the austerity of his descriptions with images full of tender feeling: after having spoken of an English lady whose religious ardour had brought her to America with her husband, and who soon after sank under the fatigues and privations of exile, he adds, "As for her virtuous husband, Isaac Johnson,

. He tried
To live without her, liked it not, and dyed."—(Vol. i.)

Mather's work gives an admirable picture of the time and country which he describes. In his account of the motives which led the Puritans to seek an asylum beyond seas, he says:

• "The God of Heaven served, as it were, a summons upon

the spirits of his people in the English nation, stirring up the spirits of thousands which never saw the faces of each other, with a most unanimous inclination to leave all the pleasant accommodations of their native country, and go over a terrible ocean, into a more terrible desert, for the pure enjoyment of all his ordinances. It is now reasonable that, before we pass any further, the reasons of this undertaking should be more exactly made known unto posterity, especially unto the posterity of those that were the undertakers, lest they come at length to forget and neglect the true interest of New England. Wherefore I shall now transcribe some of them from a manuscript wherein they were then tendered unto consideration.

General Considerations for the Plantation of New England.

“First, It will be a service unto the Church of great consequence, to carry the Gospel unto those parts of the world, and raise a bulwark against the kingdom of Antichrist, which the Jesuits labour to rear up in all parts of the world.

“Secondly, All other Churches of Europe have been brought under desolations; and it may be feared that the like judgements are coming upon us; and who knows but God hath provided this place to be a refuge for many whom he means to save out of the general destruction.

“Thirdly, The land grows weary of her inhabitants, insomuch that man, which is the most precious of all creatures, is here more vile and base than the earth he treads upon; children, neighbours, and friends, especially the poor, are counted the greatest burdens, which, if things were right, would be the chiefest of earthly blessings.

“Fourthly, We are grown to that intemperance in all excess of riot, as no mean estate almost will suffice a man

to keep sail with his equals, and he that fails in it must live in scorn and contempt : hence it comes to pass, that all arts and trades are carried in that deceitful manner and unrighteous course, as it is almost impossible for a good upright man to maintain his constant charge and live comfortably in them.

“Fifthly, The schools of learning and religion are so corrupted, as (beside the unsupportable charge of education) most children, even the best, wittiest, and of the fairest hopes, are perverted, corrupted, and utterly overthrown by the multitude of evil examples and licentious behaviours in these seminaries.

“Sixthly, The whole earth is the Lord’s garden, and he hath given it to the Sons of Adam, to be tilled and improved by them : why then should we stand starving here for places of habitation, and in the mean time suffer whole countries, as profitable for the use of man, to lie waste without any improvement ?

“Seventhly, What can be a better or nobler work, and more worthy of a Christian, than to erect and support a reformed particular Church in its infancy, and unite our forces with such a company of faithful people, as by timely assistance may grow stronger and prosper ; but for want of it, may be put to great hazards, if not be wholly ruined.

“Eighthly, If any such as are known to be godly, and live in wealth and prosperity here, shall forsake all this to join with this reformed Church, and with it run the hazard of an hard and mean condition, it will be an example of great use, both for the removing of scandal, and to give more life unto the faith of God’s people in their prayers for the plantation, and also to encourage others to join the more willingly in it.”

Further on, when he declares the principles of the Church

of New England with respect to morals, Mather inveighs with violence against the custom of drinking healths at table, which he denounces as a pagan and abominable practice. He proscribes with the same rigour all ornaments for the hair used by the female sex, as well as their custom of having the arms and neck uncovered.

In another part of his work he relates several instances of witchcraft which had alarmed New England. It is plain that the visible action of the devil in the affairs of this world appeared to him an incontestable and evident fact.

This work of Cotton Mather displays, in many places, the spirit of civil liberty and political independence which characterized the times in which he lived. Their principles respecting government are discoverable at every page. Thus, for instance, the inhabitants of Massachusetts, in the year 1630, ten years after the foundation of Plymouth, are found to have devoted 400*l.* sterling to the establishment of the University of Cambridge. In passing from the general documents relative to the history of New England, to those which describe the several States comprised within its limits, I ought first to notice *The History of the Colony of Massachusetts, by Hutchinson, Lieutenant-Governor of the Massachusetts Province*, 2 vols. 8vo.

The History of Hutchinson, which I have several times quoted in the chapter to which this note relates, commences in the year 1628 and ends in 1750. Throughout the work there is a striking air of truth and the greatest simplicity of style: it is full of minute details.

The best History to consult concerning Connecticut is that of Benjamin Trumbull, entitled, *A Complete History of Connecticut, Civil and Ecclesiastical, 1630—1764*; 2 vols. 8vo, printed in 1818, at New-Haven. This history

contains a clear and calm account of all the events which happened in Connecticut during the period given in the title. The author drew from the best sources; and his narrative bears the stamp of truth. All that he says of the early days of Connecticut is extremely curious. See especially the Constitution of 1639, vol. i. ch. vi. p. 100; and also the Penal Laws of Connecticut, vol. i. ch. vii. p. 123.

The History of New Hampshire, by Jeremy Belknap, is a work held in merited estimation. It was printed at Boston in 1792, in 2 vols. 8vo. The third chapter of the first volume particularly worthy of attention for the valuable details it affords on the political and religious principles of the Puritans, on the causes of their emigration, and on their laws. The following curious quotation is given from a sermon delivered in 1663. "It concerneth New England always to remember that they are a plantation religious, not a plantation of trade. The profession of the purity of doctrine, worship, and discipline is written upon her forehead. Let merchants, and such as are encreasing cent. per cent. remember this, that worldly gain was not the end and design of the people of New England, but religion. And if any man among us make religion as twelve, and the world as thirteen, such an one hath not the spirit of a true New Englishman." The reader of Belknap will find in his work more general ideas, and more strength of thought, than are to be met with in the American historians even to the present day.

Among the Central States which deserve our attention for their remote origin, New York and Pennsylvania are the foremost. The best history we have of the former is entitled *A History of New York, by William Smith, printed at London in 1757*. Smith gives us important details of the wars between the French and English in

America. His is the best account of the famous confederation of the Iroquois.

With respect to Pennsylvania, I cannot do better than point out the work of Proud, entitled the *History of Pennsylvania, from the original Institution and Settlement of that Province, under the first Proprietor and Governor William Penn, in 1681, till after the year 1742; by Robert Proud, 2 vols. 8vo, printed at Philadelphia in 1797.* This work is deserving of the especial attention of the reader; it contains a mass of curious documents concerning Penn, the doctrine of the Quakers, and the character, manners, and customs of the first inhabitants of Pennsylvania.

I need not add that among the most important documents relating to this state are the Works of Penn himself and those of Franklin.



APPENDIX G.—Page 57.

We read in Jefferson's Memoirs as follows :

“At the time of the first settlement of the English in Virginia, when land was to be had for little or nothing, some provident persons having obtained large grants of it, and being desirous of maintaining the splendour of their families, entailed their property upon their descendants. The transmission of these estates from generation to generation, to men who bore the same name, had the effect of raising up a distinct class of families, who, possessing by law the privilege of perpetuating their wealth, formed by these means a sort of patrician order, distinguished by the

grandeur and luxury of their establishments. From this order it was that the King usually chose his councillors of state¹.

In the United States, the principal clauses of the English law respecting descent have been universally rejected. The first rule that we follow, says Mr. Kent, touching inheritance is the following : If a man dies intestate, his property goes to his heirs in a direct line. If he has but one heir or heiress, he or she succeeds to the whole. If there are several heirs of the same degree, they divide the inheritance equally amongst them, without distinction of

This rule was prescribed for the first time in the State of New York by a statute of the 23rd of February, 1786. (*See Revised Statutes*, vol. iii., *Appendix*, p. 48.) It has since then been adopted in the revised statutes of the same State. At the present day this law holds good throughout the whole of the United States, with the exception of the State of Vermont, where the male heir inherits a double portion : Kent's *Commentaries*, vol. iv. p. 370. Mr. Kent, in the same work, vol. iv. p. 1—22, gives an historical account of American legislation on the subject of entail : by this we learn that previous to the revolution the colonies followed the English law of entail. Estates tail were abolished in Virginia in 1776, on a motion of Mr. Jefferson. They were suppressed in New York in 1786; and have since been abolished in North Carolina, Kentucky, Tennessee, Georgia, and Missouri. In Vermont, Indiana, Illinois, South Carolina, and Louisiana, entail was never introduced. Those States which thought proper to preserve the English law of entail, modified it in such a way as to deprive it of

¹ This passage is extracted and translated from M. Conseil's work upon the Life of Jefferson, entitled "*Mélanges Politiques et Philosophiques de Jefferson*."

its most aristocratic tendencies. "Our general principles on the subject of government," says Mr. Kent, "tend to favour the free circulation of property."

It cannot fail to strike the French reader who studies the law of inheritance, that on these questions the French legislation is infinitely more democratic even than the American.

The American law makes an equal division of the father's property, but only in the case of his will not being known; "for every man," says the law, "in the State of New York," (*Revised Statutes*, vol. iii., *Appendix*, p. 51,) has entire liberty, power, and authority, to dispose of his property by will, to leave it entire, or divided in favour of any persons he chooses as his heirs, provided he do not leave it to a political body or any corporation." The French law obliges the testator to divide his property equally, or nearly so, among his heirs.

Most of the American republics still admit of entails, under certain restrictions; but the French law prohibits entail in all cases.

If the social condition of the Americans is more democratic than that of the French, the laws of the latter are the most democratic of the two. This may be explained more easily than at first appears to be the case. In France, democracy is still occupied in the work of destruction; in America it reigns quietly over the ruins it has made.

APPENDIX H.—Page 68.

SUMMARY OF THE QUALIFICATIONS OF VOTERS IN THE
UNITED STATES.●

All the States agree in granting the right of voting at the age of twenty-one. In all of them it is necessary to have resided for a certain time in the district where the vote is given. This period varies from three months to two years.

As to the qualification; in the State of Massachusetts it is necessary to have an income of three pounds sterling or a capital of sixty pounds.

In Rhode Island, a man must possess landed property to the amount of 133 dollars. ●

In Connecticut, he must have a property which gives an income of seventeen dollars. A year of service in the militia also gives the elective privilege.

In New Jersey, an elector must have a property of fifty pounds a year.

In South Carolina and Maryland, the elector must possess fifty acres of land. .

In Tennessee, he must possess some property.

In the States of Mississippi, Ohio, Georgia, Virginia, Pennsylvania, Delaware, New York, the only necessary qualification for voting is that of paying the taxes; and in most of the States, to serve in the militia is equivalent to the payment of taxes.

In Maine and New Hampshire any man can vote who is not on the pauper list.

Lastly, in the States of Missouri, Arkansas, Illinois, Louisiana, Indiana, Kentucky, and Vermont, the conditions of voting have no reference to the property of the elector.

I believe there is no other State beside that of North Carolina in which different conditions are applied to the voting for the Senate and the electing the House of Representatives. The electors of the former, in this case, should possess in property fifty acres of land; to vote for the latter, nothing more is required than to pay taxes.

APPENDIX I.—Page 131.

The small number of Custom-house officers employed in the United States compared with the extent of the coast renders smuggling very easy; notwithstanding which it is less practised than elsewhere, because everybody endeavours to press it. In America there is no police for the prevention of fires, and such accidents are more frequent than in Europe; but in general they are more speedily extinguished, because the surrounding population is prompt in lending assistance.

APPENDIX K.—Page 133.

It is incorrect to assert that centralization was produced by the French revolution: the revolution brought it to perfection, but did not create it. The mania for centralization and government regulations dates from the time when jurists began to take a share in the government, in the time of Philippe-le-Bel; ever since which period they have been on the increase. In the year 1775, M. de Males-

herbes, speaking in the name of the Cour des Aides, said to Louis XIV.¹

“ Every corporation and every community of citizens, retained the right of administering its own affairs; a right which not only, forms part of the primitive constitution of the kingdom, but has a still higher origin; for it is the right of nature and of reason. Nevertheless your subjects, Sire, have been deprived of it; and we cannot refrain from saying that in this respect your government has fallen into puerile extremes. From the time when powerful ministers made it a political principle to prevent the convocation of a national assembly, one consequence has succeeded another, until the deliberations of the inhabitants of a village are declared null when they have not been authorized by the Intendant. Of course, if the community has an expensive undertaking to carry through, it must remain under the control of the sub-delegate of the Intendant, and consequently follow the plan he proposes, employ his favourite workmen, pay them according to his pleasure; and if an action at law is deemed necessary, the Intendant's permission must be obtained. The cause must be pleaded before this first tribunal, previous to its being carried into a public court; and if the opinion of the Intendant is opposed to that of the inhabitants, or if their adversary enjoys his favour, the community is deprived of the power of defending its rights. Such are the means, Sire, which have been exerted to extinguish the municipal spirit in France; and to stifle, if possible, the opinions of the citizens. The nation may be said to lie under an interdiction, and to be in wardship under guardians.”

What could be said more to the purpose at the present

¹ See ‘Mémoires pour servir à l'Histoire du Droit Public de la France en matière d'Impôts,’ p. 654, printed at Brussels in 1779.

day, when the revolution has achieved what are called its victories in centralization ?

In 1789, Jefferson wrote from Paris to one of his friends : " There is no country where the mania for over-governing has taken deeper root than in France, or been the source of greater mischief." Letter to Madison, 28th August, 1789.

The fact is that for several centuries past the central power of France has done everything it could to extend central administration ; it has acknowledged no other limits than its own strength. The central power to which the revolution gave birth made more rapid advances than any of its predecessors, because it was stronger and wiser than they had been ; Louis XIV. committed the welfare of such ~~communities~~ ^{communities} to the caprice of an Intendant ; Napoleon left them to that of the Minister. The same principle governed both, though its consequences were more or less remote.

APPENDIX L.—Page 140.

This immutability of the Constitution of France is a necessary consequence of the laws of that country.

To begin with the most important of all the laws, that which decides the order of succession to the Throne ; what can be more immutable in its principle than a political order founded upon the natural succession of father to son ? In 1814 Louis XVIII. had established the perpetual law of hereditary succession in favour of his own family. The individuals who regulated the consequences of the revolution of 1830 followed his example ; they merely established the perpetuity of the law in favour of another fa-

mily. In this respect they imitated the Chancellor Meau-
pou, who, when he erected the new parliament upon the
ruins of the old, took care to declare in the same ordinance
that the rights of the new magistrates should be as inalien-
able as those of their predecessors had been.

The laws of 1830, like those of 1814, point out no way
of changing the Constitution; and it is evident that the or-
dinary means of legislation are insufficient for this purpose.
As the King, the Peers, and the Deputies all derive their
authority from the Constitution, these three powers united
cannot alter a law by virtue of which alone they govern.
Out of the pale of the Constitution, they are nothing :
where, then, could they take their stand to effect a change
in its provisions? The alternative is clear : either their
efforts are powerless against the Charter, which continues
to exist in spite of them, in which case they only reign in
the name of the Charter ; or, they succeed in changing the
Charter, and then the law by which they existed being
annulled, they themselves cease to exist. By destroying
the Charter they destroy themselves.

This is much more evident in the laws of 1830 than in
those of 1814. In 1814, the royal prerogative took its
stand above and beyond the Constitution ; but in 1830,
it was avowedly created by, and dependent on, the Con-
stitution.

A part therefore of the French Constitution is immuta-
ble, because it is united to the destiny of a family ; and the
body of the Constitution is equally immutable, because
there appear to be no legal means of changing it.

These remarks are not applicable to England. That
country having no written Constitution, who can assert
when its Constitution is changed ?

APPENDIX M.—Page 140.

The most esteemed authors who have written upon the English Constitution agree with each other in establishing the omnipotence of the Parliament.

Delolme says, “ It is a fundamental principle with the English lawyers, that Parliament can do everything except making a woman a man, or a man a woman.

Blackstone expresses himself more in detail, if not more energetically, than Delolme, in the following terms :

“ The power and jurisdiction of Parliament, says Sir Edward Coke (4 Inst. 36.), is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. And of this high Court, he adds, may be truly said, ‘ *Si antiquitatem spectes, est vetustissima ; si dignitate, est honoratissima ; si jurisdictionem, est capacissima.*’ It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denominations ; ecclesiastical or temporal ; civil, military, maritime, or criminal ; this being the place where that absolute despotic power which must, in all Governments, reside somewhere, is entrusted by the Constitution of these kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new-model the succession to the Crown ; as was done in the reign of Henry VIII. and William III. It can alter the established religion of the land ; as was done in a variety of instances in the reigns of King Henry VIII. and his three children. It can *change and create afresh even*

the Constitution of the kingdom, and of parliaments themselves; as was done by the Act of Union and the several statutes for triennial and septennial elections. It can, in short, do everything that is not naturally impossible to be done; and, therefore, some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament.”

APPENDIX N.—Page 156.

There is no question upon which the American Constitutions agree more fully than upon that of political jurisdiction. All the Constitutions which take cognizance of this matter, give to the House of Delegates the exclusive right of impeachment; excepting only the Constitution of North Carolina, which grants the same privilege to grand juries. (Article 23.) . . .

Almost all the Constitutions give the exclusive right of pronouncing sentence to the Senate, or to the Assembly which occupies its place. . . .

The only punishments which the political tribunals can inflict are removal, or the interdiction of public functions for the future. There is no other Constitution but that of Virginia, (p. 152,) which enables them to inflict every kind of punishment.

The crimes which are subject to political jurisdiction are, in the Federal Constitution, (Section 4. Art. 1.); in that of Indiana, (Art. 3. paragraphs 23 and 24.); of New York, (Art. 5.); of Delaware, (Art. 5.); high treason, bribery, and other high crimes or offences.

In the Constitution of Massachusetts, (Chap. 1. Sec.

tion 2.); that of North Carolina, (Art. 23.); of Virginia, (p. 252,) misconduct and maladministration.

In the Constitution of New Hampshire, (p. 105,) corruption, intrigue, and maladministration.

In Vermont, (Chap. II., Art. 24.) maladministration.

In South Carolina, (Art. 5.); Kentucky, (Art. 5.); Tennessee, (Art. 4.); Ohio, (Art. 1. § 23, 24.); Louisiana, (Art. 5.); Mississippi, (Art. 5.); Alabama, (Art. 6.); Pennsylvania, (Art. 4.); crimes committed in the non-performance of official duties.

In the States of Illinois, Georgia, Maine, and Connecticut, no particular offences are specified.

APPENDIX O.

It is true that the powers of Europe may carry on maritime wars with the Union; but there is always greater facility and less danger in supporting a maritime than a continental war. Maritime warfare only requires one species of effort. A commercial people which consents to furnish its Government with the necessary funds, is sure to possess a fleet. And it is far easier to induce a nation to part with its money, almost unconsciously, than to reconcile it to sacrifices of men and personal efforts. Moreover defeat by sea rarely compromises the existence or independence of the people which endures it.

As for continental wars, it is evident that the nations of Europe cannot be formidable in this way to the American Union. It would be very difficult to transport and maintain in America more than 25,000 soldiers; an army which may be considered to represent a nation of about 2,000,000 of men. The most populous nation of Europe contending in this way against the Union, is in the position of a nation

of 2,000,000 of inhabitants at war with one of 12,000,000. Add to this, that America has all its resources within reach, whilst the European is at 4000 miles distance from his; and that the immensity of the American continent would of itself present an insurmountable obstacle to its conquest.

APPENDIX P.

Constitution of the United States.

We, the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.—SECTION 1.

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode Island* and *Providence Plantations* one; *Connecticut* five; *New York* six; *New Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North Carolina* five; *South Carolina* five; and *Georgia* three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill up such vacancies.

5. The House of Representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.

1. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally

as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; and of the third class at the expiration of the sixth year; so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointment until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgement, in case of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgement, and punishment according to law.

SECTION 4.

1. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgement require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objection at large on their journal, and proceed to re-consider it. If, after such re-consideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to

the other House, by which it shall likewise be re-considered; and if approved by two thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States :

2. To borrow money on the credit of the United States :

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures :

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

7. To establish post offices and post roads :

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

9. To constitute tribunals inferior to the supreme court :
To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water :

11. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

12. To provide and maintain a navy :

13. To make rules for the government and regulation of the land and naval forces :

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions :

15. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United

consent of the legislature of the State in
~~the same~~ shall be, for the erection of forts, maga-
arsenals, dock-yards, and other needful buildings.

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECTION 9.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or ex post facto law, shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another: nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expendi-

tures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION 10.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the neat produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.—SECTION 1.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress ; but no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

3. The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each ; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed ; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President ; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President: neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

SECTION 2.

1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of

the several States, when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices ; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur : and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 3.

1. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient ; he may on extraordinary occasions convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper ; he shall receive ambassadors and other public ministers ; he shall take care that the laws be faithfully

executed; and shall commission all the officers of the United States.

SECTION 4.

1. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.—SECTION 1.

1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2.

1. The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a

party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.—SECTION 1.

1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

SECTION 2.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labour in one State under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour; but shall be delivered up on claim of the party to whom such service or labour may be due.

SECTION 3.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION 4.

1. The United States shall guarantee to every State in this Union a republican form of Government, and shall protect each of them against invasion; and, on application

of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

1. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article: and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several State legislatures, and all

executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution : but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

1. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty seven, and of the Independance of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President and Deputy from Virginia.

NEW HAMPSHIRE.

John Langdon,
Nicholas Gilman.

David Bearly,
William Paterson,
Jonathan Dayton.

MASSACHUSETTS.

Nathaniel Gorman,
Rufus King.

PENNSYLVANIA.

Benjamin Franklin,
Thomas Maffin,
Robert Morris,
George Glymes,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

CONNECTICUT.

William Samuel Johnson,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

William Livingston,

DELAWARE.

George Read,

Gunning Bedford, jun.

John Dickinson,

Richard Bassett,

Jacob Broom.

NORTH CAROLINA.

William Blount,

Richard Dobbs Spaight,

Hugh Williamson.

MARYLAND.

James M'Henry,

Daniel of St. Thb. Jenifer,

Daniel Carrol.

SOUTH CAROLINA.

John Rutledge,

Chas. Cotesworth Pinckney,

Charles Pinckney,

Pierce Butler.

VIRGINIA.

John Blair,

James Madison, jun.

GEORGIA.

William Few,

Abraham Baldwin.

Attest, WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

Art. 1. Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Art. 2. A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Art. 3. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner prescribed by law.

Art. 4. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Art. 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Art. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defence.

Art. 7. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Art. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Art. 9. The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Art. 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Art. 11. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Art. 12. § 1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such of the number be a majority of the whole number of electors appointed: and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, the Vice-President shall act as Pre-

sident, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice-President of the United States.

APPENDIX Q.

Constitution of New York,

AS AMENDED.

WE, the people of the State of New York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this Constitution.

ARTICLE 1.

§ 1. The legislative power of this State shall be vested in a Senate and an Assembly.

2. The Senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

3. A majority of each House shall constitute a quorum

to do business. Each House shall determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each House shall choose its own officers, and the Senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

4. Each House shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each House shall be kept open, except when the public welfare shall require secrecy. Neither House shall, without the consent of the other, adjourn for more than two days.

5. The State shall be divided into eight districts, to be called Senate districts, each of which shall choose four senators.

And as soon as the Senate shall meet, after the first election to be held in pursuance of this Constitution, they shall cause the senators to be divided by lot, into four classes, of eight in each, so that every district shall have one senator of each class: the classes to be numbered, one, two, three, and four. And the seats of the first class shall be vacated at the end of the first year; of the second class, at the end of the second year; of the third class, at the end of the third year; of the fourth class, at the end of the fourth year; in order that one senator be annually elected in each Senate district.

6. An enumeration of the inhabitants of the State shall be taken, under the direction of the legislature, in the year one thousand eight hundred and twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each Senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of colour

not taxed ; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory ; and no county shall be divided in the formation of a Senate district.

7. The members of the Assembly shall be chosen by counties, and shall be apportioned among the several counties of the State, as nearly as may be, according to the numbers of their respective inhabitants, excluding aliens, paupers, and persons of colour not taxed. An apportionment of members of Assembly shall be made by the legislature at its first session after the return of every enumeration ; and, when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the Assembly shall be made by the present legislature according to the last enumeration, taken under the authority of the United States, as nearly as may be. Every county heretofore established, and separately organized, shall always be entitled to one member of the Assembly, and no new county shall hereafter be erected, unless its population shall entitle it to a member.

8. Any bill may originate in either House of the legislature ; and all bills passed by one House, may be amended by the other.

9. The members of the legislature shall receive for their services a compensation, to be ascertained by law, and paid out of the public treasury ; but no increase of the compensation shall take effect during the year in which it shall have been made. And no law shall be passed increasing the compensation of the members of the legislature, beyond the sum of the three dollars a day.

10. No member of the legislature shall receive any civil appointment from the governor and Senate, or from the legislature, during the term for which he shall have been elected.

11. No person being a member of Congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to Congress, or appointed to any office, civil or military, under the United States, his acceptance thereof shall vacate his seat.

12. Every bill which shall have passed the Senate and Assembly, shall, before it become a law, be presented to the governor: if he approve, he shall sign it, but if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it: if, after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two thirds of the members present, it shall become a law; but in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journals of each House respectively: if any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

13. All officers holding their offices during good behaviour, may be removed by joint resolution of the two Houses of the legislature, if two thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein.

14. The political year shall begin on the first day of January; and the legislature shall every year assemble

on the first Tuesday in January, unless a different day shall be appointed by law.

15. The next election for governor, lieutenant-governor, senators, and members of Assembly, shall commence on the first Monday of November one thousand eight hundred and twenty-two; and all subsequent elections shall be held at such time in the month of October or November as the legislature shall by law provide.

16. The governor, lieutenant-governors, senators, and members of Assembly, first elected under this Constitution, shall enter on the duties of their respective offices on the first day of January one thousand eight hundred and twenty-three; and the governor, lieutenant-governor, senators, and members of Assembly, now in office, shall continue to hold the same until the first day of January one thousand eight hundred and twenty-three, and no longer.

ARTICLE 2.

1. Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this State one year preceding any election, and for the last six months a resident of the town or county where he may offer his vote; and shall have, within the year next preceding the election, paid a tax to the State or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or being armed and equipped according to law, shall have performed within that year, military duty in the militia of this State; or who shall be exempted from performing militia duty in consequence of being a fireman in any city, town, or village in this State; and also every male citizen of the age of twenty-one years, who shall have been for three years next preceding such elections an inhabitant of this State; and for the last year a resident in

the town or county where he may offer his vote ; and shall have been, within the last year, assessed to labour upon the public highways, and shall have performed the labour, or paid an equivalent therefor, according to law ; shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people : but no man of colour, unless he shall have been for three years a citizen of this State, and for one year next preceding any election shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars over and above all debts and incumbrances charged thereon ; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at such election. And no person of colour shall be subject to direct taxation, unless he shall be seized and possessed of such real estate as aforesaid.

2. Laws may be passed excluding from the right of suffrage persons who have been, or may be, convicted of infamous crimes.

3. Laws shall be made for ascertaining, by proper proofs, the citizen who shall be entitled to the right of suffrage, hereby established.

*4. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

ARTICLE 3.

§ 1. The executive power shall be vested in a governor. He shall hold his office for two years ; and a lieutenant-governor shall be chosen at the same time, and for the same term.

2. No person, except a native citizen of the United States, shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not be a free-

holder, and shall not have attained the age of thirty years, and have been five years a resident within the State; unless he shall have been absent during that time on public business of the United States, or of this State.

3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor or for lieutenant-governor, the two Houses of the legislature shall, by joint ballot, choose one of the said persons, so having an equal and the highest number of votes, for governor or lieutenant-governor.

4. The governor shall be general and commander-in-chief of all the militia, and admiral of the navy of the State. He shall have power to convene the legislature (or the Senate only,) on extraordinary occasions. He shall communicate by message to the legislature, at every Session, the condition of the State; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of Government, civil and military. He shall expediate all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

5. The governor shall have power to grant reprieves and pardons, after conviction, for all offences except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence until the case shall be reported to the legislature at its next meeting; when the legislature shall either pardon,

or direct the execution of the criminal, or grant a further reprieve.

6. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the State, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the governor absent or impeached shall return or be acquitted. But when the governor shall, with the consent of the legislature, be out of the State in time of war, at the head of a military force thereof, he shall still continue commander-in-chief of all the military force of the State.

7. The lieutenant-governor shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of governor the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the State, the president of the Senate shall act as governor until the vacancy shall be filled or the disability shall cease.

ARTICLE 4.

§ 1. Militia officers shall be chosen, or appointed, as follows:—Captains, subalterns, and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions. Brigadier-generals, by the field officers of their respective brigades. Major-generals, brigadier-generals, and commanding officers of regiments or separate battalions, shall appoint the staff officers to their respective divisions, brigades, regiments, or separate battalions.

2. The governor shall nominate, and, with the consent of the Senate, appoint, all major-generals, brigade inspectors, and chiefs in the staff departments, except the adju-

stants-general and commissary-general. The adjutant-general shall be appointed by the governor.

3. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor.

4. The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office, unless by the Senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, pursuant to law. The present officers of the militia shall hold their commissions subject to removal, as before provided.

5. In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two thirds of the members present in each House shall concur therein.

6. The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, and commissary-general, shall be appointed as follows: The Senate and Assembly shall each openly nominate one person for the said offices respectively; after which they shall meet together, and if they shall agree in their nominations, the person so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators and members of Assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney-general, surveyor-general, and commissary-general, shall hold their offices for three years, unless sooner removed by concurrent resolution of the Senate and Assembly.

The governor shall nominate, by message, in writing

and, with the consent of the Senate, shall appoint all judicial officers, except justices of the peace, who shall be appointed in manner following, that is to say: The board of supervisors in every county in this State, shall, at such times as the legislature may direct, meet together: and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices of the peace, to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons: and it shall be the duty of the said board of supervisors and judges of county courts, to compare such nominations, at such time and place as the legislature may direct; and if, on such comparison, the said boards of supervisors and judges of county courts shall agree in their nominations, in all or in part, they shall file a certificate of the nominations, in which they shall agree in the office of the clerk of the county: and the person or persons named in such certificates shall be justices of the peace; and in case of disagreement in whole or in part, it shall be the further duty of the said boards of supervisors and judges respectively to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint so many justices of the peace as shall be requisite to fill the vacancies. Every person appointed a justice of the peace shall hold his office for four years, unless removed by the county court for causes particularly assigned by the judges of the said court. And no justice of the peace shall be removed until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

8. Sheriffs and clerks of counties, including the register, and clerks of the city and county of New York, shall be

chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security from time to time, and in default of giving such new security their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. And the governor may remove any such sheriff, clerk, or register, at any time within the three years for which he shall be elected, giving to such sheriff, clerk, or register, a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

9. The clerks of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district attorneys, by the county courts. Clerks of courts and district attorneys shall hold their offices for three years, unless sooner removed by the courts appointing them.

10. The mayors of all the cities in this State shall be appointed annually by the common councils of their respective cities.

11. So many coroners as the legislature may direct, not exceeding four in each county, shall be elected in the same manner as sheriffs, and shall hold their offices for the same term, and be removable in like manner.

12. The governor shall nominate, and, with the consent of the Senate, appoint masters and examiners in chancery; who shall hold their offices for three years, unless sooner removed by the Senate on the recommendation of the governor. The registers and assisting registers shall be appointed by the chancellor, and hold their offices during his pleasure.

13. The clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of said court; and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the several courts; or by the governor, with the consent of the Senate, as may be directed by law.

14. The special justices and the assistant justices, and their clerks, in the city of New York, shall be appointed by the common council of the said city; and shall hold their offices for the same term that the justices of the peace, in the other counties of this State, hold their offices, and shall be removable in like manner.

15. All officers heretofore elective by the people shall continue to be elected; and all other officers whose appointment is not provided for by this Constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as may by law be directed.

16. Where the duration of any office is not prescribed by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

ARTICLE 5.

§ 1. The court for the trial of impeachments, and the correction of errors, shall consist of the President of the Senate, the senators, the chancellors, and the justices of the supreme court, or the major part of them: but when an impeachment shall be prosecuted against the chancellor, or any justice of the supreme court, the person so im-

peached shall be suspended from exercising his office until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought, on a judgement of the supreme court, the justices of that court shall assign the reasons for their judgement, but shall not have a voice for its affirmance or reversal.

2. The Assembly shall have the power of impeaching all civil officers of this State for male and corrupt conduct in office, and high crimes and misdemeanors: but a majority of all the members elected shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question according to evidence: and no person shall be convicted without the concurrence of two thirds of the members present. Judgement, in cases of impeachment, shall not extend further than the removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under this State; but the party convicted shall be liable to indictment and punishment, according to law.

3. The chancellor, and justices of the supreme court, shall hold their offices during good behaviour, or until they shall attain the age of sixty years.

4. The supreme court shall consist of a chief justice and two justices, any of whom may hold the court.

5. The State shall be divided, by law, into a convenient number of circuits, not less than four, nor exceeding eight, subject to alteration, by the legislature, from time to time, as the public good may require; for each of which a circuit judge shall be appointed in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a

justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and in courts of oyer and terminer and jail delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

6. Judges of the county courts, and recorders of cities, shall hold their office for five years, but may be removed by the Senate, on the recommendation of the governor, for causes to be stated in such recommendation.

7. Neither the chancellor, nor justices of the supreme court, not any circuit judge, shall hold any other office or public trust. All votes for any elective office, given by the legislature or the people, for the chancellor, or a justice of the supreme court, or circuit judge, during his continuance in his judicial office, shall be void.

ARTICLE 6.

§ 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation :

I do solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ——— according to the best of my ability.

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

ARTICLE 7.

§ 1. No member of this State shall be disfranchised,

or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgement of his peers.

2. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate for ever; and no new court shall be instituted, but such as shall proceed according to the course of the common law; except such courts of equity as the legislature is herein authorized to establish.

3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall for ever be allowed in this State to all mankind; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

4. And whereas the ministers of the Gospel are, by their profession, dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their functions: therefore no minister of the Gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place within this State.

5. The militia of this State shall, at all times hereafter, be armed and disciplined and in readiness for service: but all such inhabitants of this State, of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, shall be excused therefrom by paying to the State an equivalent in money; and the legislature shall provide by law for the collection of such equivalent, to be estimated according to the expense in time and money of an ordinary able-bodied militia-man.

6. The privilege of the writ of *habeas corpus* shall not

be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

7. No person shall be held to answer for a capital or other infamous crime, [except in cases of impeachment, and in cases of the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of the Congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature,] unless on presentment, or indictment of a grand jury; and in every trial on impeachment, or indictment the party accused shall be allowed counsel as in civil actions. No person shall be subject for the same offence to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty or property, without due process of law: nor shall private property be taken for public use, without just compensation.

8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

9. The assent of two thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public moneys or property, for local or private purposes, or creating, continuing, altering, or renewing, any body politic or corporate.

10. The proceeds of all lands belonging to this State, except such parts thereof as may be reserved or appro-

priated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools throughout this State. Rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March one thousand eight hundred and twenty-one, shall be imposed on, and collected from, all parts of the navigable communication between the great western and northern lakes and the Atlantic Ocean, which now are, or hereafter shall be, made and completed: and the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April one thousand eight hundred and seventeen; and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars otherwise appropriated by the said act; and the amount of the revenue, established by the act of the legislature of the thirtieth of March one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers; shall be and remain inviolably appropriated and applied to the completion of such navigable communications, and to the payment of the interest, and reimbursement of the capital, of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll on the said navigable communications, nor the duties on the manufacture of salt aforesaid, nor the duties on goods sold at auction, as established by the act of the fifteenth of April one thousand eight hundred and seventeen; nor the amount of the revenue established by the act of March the thirtieth one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers; shall be re-

duced or diverted, at any time, before the full and complete payment of the principal and interest of the money borrowed, or to be borrowed, as aforesaid. And the legislature shall never sell or dispose of the salt springs belonging to this State, nor the lands contiguous thereto, which may be necessary or convenient for their use, nor the said navigable communications or any part or section thereof, but the same shall be and remain the property of this State.

11. No lottery shall hereafter be authorized in this State, and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

12. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October one thousand seven hundred and seventy-five, or which may hereafter be made, of or with the Indians in this State, shall be valid, unless under the authority and with the consent of the legislature.

13. Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

14. All grants of land within the State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligations of any debts contracted by the State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings, in courts of justice.

ARTICLE 8.

§ 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen; and shall be published, for three months previous to the time of making such choice; and if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two thirds of all the members elected to each House, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner, and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting there-

on, such amendment or amendments shall become part of the Constitution.

ARTICLE 9.

§ 1. This Constitution shall be in force from the last day of December in the year one thousand eight hundred and twenty-two. But all those parts of the same which relate to the right of suffrage, the division of the State into Senate districts, the number of members of the Assembly to be elected in pursuance of this Constitution, the appointment of members of Assembly, the elections hereby directed to commence on the first Monday of November in the year one thousand eight hundred and twenty-two, the continuance of the members of the present legislature in office until the first day of January in the year one thousand eight hundred and twenty-three, and the prohibition against authorizing lotteries, the prohibition against appropriating the public moneys or property for local or private purposes, or creating, continuing, altering, or renewing any body politic or corporate without the assent of two thirds of the members elected to each branch of the legislature, shall be in force and take effect from the last day of February next. The members of the present legislature shall, on the first Monday of March next, take and subscribe an oath or affirmation to support the Constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroners, shall be elected at the election hereby directed to commence on the first Monday of November in the year one thousand eight hundred and twenty-two; but they shall not enter on the duties of their offices before the first day of January then next following. The commissions of all persons holding civil offices on the last day of December one thousand eight

hundred and twenty-two, shall expire on that day ; but the officers, then in commission may respectively continue to hold their said offices until new appointments or elections shall take place under this Constitution.

2. The existing laws, relative to the manner of notifying, holding, and conducting elections, making returns, and canvassing votes, shall be in force and observed, in respect of the elections hereby directed, to commence on the first Monday of November in the year one thousand eight hundred and twenty-two, so far as the same are applicable. And the present legislature shall pass such other and further laws as may be requisite for the execution of the provisions of this Constitution in respect to elections.

Done in Convention, at the Capitol, in the city of Albany, the tenth day of November in the year one thousand eight hundred and twenty-one, And of the Independence of the United States of America, the forty-sixth.

In witness whereof, we have hereunto subscribed our names.

DANIEL D. TOMPKINS,
President.

JOHN F. BACON,
SAMUEL S. GARDINER, } *Secretaries.*

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